

Page 1

Fox v Lee - 9-6-2017 - Javell Fox

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

IN THE MATTER OF
JAVELL FOX,

Plaintiff,
v

15-CV-0390

SUPERINTENDENT LEE , et al

Defendants.

DEPONENT:

JAVELL FOX

DATE:

September 6, 2017

LOCATION:

Comstock, New York

TAKEN BY:

Counsel for the Defendants

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Page 2

1 Fox v Lee - 9-6-2017 - Javell Fox

2 APPEARANCES:

3

4 FOR THE PLAINTIFF:

5 Pro se

6 FOR THE DEFENDANTS:

7 NYS OFFICE OF THE ATTORNEY GENERAL
8 BY: MARIA LISI-MURRAY
9 The Capitol
Albany, New York

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Page 3

1 Fox v Lee - 9-6-2017 - Javell Fox

2 I N D E X O F P R O C E E D I N G S

3 JAVELL FOX; Sworn
4 Direct Examination by Ms. Lisi-Murray 7

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Page 4

1 Fox v Lee - 9-6-2017 - Javell Fox

2 STIPULATIONS

3 It is HEREBY STIPULATED by and among the attorneys
4 for the respective parties, in accordance with the Federal
5 Rules of Civil Procedure, that this deposition may be
6 taken by the Defendants at this time, pursuant to
7 subpoena;

8 FURTHER STIPULATED, that all objections except as to
9 the form of the questions and responsiveness of the
10 answers, be reserved until trial;

11 FURTHER STIPULATED, that the witness may read and
12 sign the deposition and make any corrections to same
13 before any Notary Public;

14 AND FURTHER STIPULATED, that if the original
15 deposition has not been duly signed by the witness and
16 returned to the attorney taking the deposition by the time
17 of trial or any hearing in this cause, a certified copy of
18 the deposition may be used as though it were the original

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Page 5

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2 (On the record 11:40 a.m.)

3 THE COURT REPORTER: Okay. It's
4 eleven forty a.m. We're on the record. Can you raise
5 your right hand please?

6 MR. FOX: Yes.

7 THE COURT REPORTER: Do you swear
8 or affirm the testimony you're about to give today is the
9 truth, the whole truth, and nothing but the truth?

10 MR. FOX: Yes, it is.

11 JAVELL FOX; Sworn

12 THE COURT REPORTER: Can you please
13 state your full name for the record?

14 THE WITNESS: Javell Fox.

15 THE COURT REPORTER: Thank you.

16 MS. LISI-MURRAY: All set?

17 THE COURT REPORTER: All set.

18 MS. LISI-MURRAY: All right.

19 THE WITNESS: Real quick before we
20 start, Ms. Lisi-Murray.

21 MS. LISI-MURRAY: Uh-huh.

22 THE WITNESS: Yeah, you had called
23 me down here. Well, these officers, you know, they're
24 being -- they harassing me constantly.

25 MS. LISI-MURRAY: Okay.

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Page 6

1 Fox v Lee - 9-6-2017 - Javell Fox

2 THE WITNESS: And on top of that,
3 you know, like I'm locked in the cell twenty-four hours a
4 day inside this prison.

5 MS. LISI-MURRAY: Okay.

6 THE WITNESS: I don't go using no
7 phone, I don't go to recreation anything --

8 MS. LISI-MURRAY: Okay.

9 THE WITNESS: -- because of -- no
10 other prisoners facing this type of discrimination.

11 There's no way that you can contact the judge or anything
12 and get me to another facility where I don't have to be
13 put in this kind of abuse while I'm down here?

14 MS. LISI-MURRAY: No. I -- I -- I
15 had you -- and just -- just to answer your question and --
16 and I had you transferred here for the -- the ease of
17 travel with respect to taking your deposition.

18 THE WITNESS: Yeah.

19 MS. LISI-MURRAY: You sued it. I
20 get to take your deposition. This is the process by which
21 I get to ask you questions. I can address whatever
22 concerns you have to some extent but, yeah, I had -- I had
23 you moved here so I could -- I could easily travel to take
24 your deposition.

25 THE WITNESS: Yeah, yeah. Yeah, I

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Page 7

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2 know now. I figured that, yeah.

3 MS. LISI-MURRAY: Right. I have no
4 control though otherwise in terms of where DOCCS
5 determines that you belong. So -- and I have no
6 authority, I can't -- I can't authorize move or agree to
7 any other sort of transfer. This was a -- a courtesy that
8 DOCCS agreed to do for me but I have no ability to ask
9 them to put you anywhere for any other purpose other than
10 --.

11 THE WITNESS: To relieve a
12 discrimination lawsuit?

13 MS. LISI-MURRAY: No, well there is
14 no --

15 THE WITNESS: Okay. All right.

16 MS. LISI-MURRAY: -- and -- and
17 we're here to talk about your -- your discriminating --
18 discrimination lawsuit. And I'm just going to start.

19 DIRECT EXAMINATION

20 BY MS. LISI-MURRAY:

21 Q. Again, my name is Maria Lisi-Murray.
22 I'm an assistant attorney general assigned to defend the
23 case in the matter of Javell Fox versus Superintendent Lee
24 et al Civil Action Number 15-C.V.-0390. And, Mr. Fox, as
25 a part of the defense of the individual corrections

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Page 8

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2 officers in this case I'm -- I'm here to take your
3 deposition and ask you some questions. So I'm going to
4 give you -- have you testified at a deposition before?

5 **A. Yes.**

6 Q. Okay. Have you been a -- a plaintiff
7 or a defendant in a lawsuit before this one?

8 **A. Yes.**

9 Q. Okay. How many times have you
10 testified at a deposition?

11 **A. One.**

12 Q. And under what circumstances? Were
13 you a plaintiff or a defendant?

14 **A. Plaintiff.**

15 Q. Okay. Was it another civil lawsuit
16 you filed?

17 **A. Yes.**

18 Q. Where was that filed do you know?

19 **A. That's -- I don't want to answer that.**

20 Q. Was it in the northern district of New
21 York?

22 **A. Northern district, yes.**

23 Q. When was that filed?

24 **A. Okay. I don't see the relevance and I**
25 **forgot. I don't remember either.**

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Page 9

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 Q. You don't get to object to relevance
3 to my questions. You either answer the questions or you
4 don't. If you don't answer the questions I'll make a
5 motion to dismiss your case entirely. You can do what you
6 want to do but I get to ask the questions and you don't
7 get to -- you can -- you can object and put it on the
8 record, but you have to give me an answer, so.

9 **A. Yeah, I object to that question.**

10 Q. Okay. So give me an answer.

11 **A. Some time in 2013 maybe, '14,**
12 **something like that.**

13 Q. Okay. And who were the defendants in
14 that if you remember?

15 **A. Sergeant Harris.**

16 Q. Any other defendants?

17 **A. No.**

18 Q. What was the basis of that lawsuit?

19 **A. Basis of that lawsuit was basically**
20 **denial of access to the law library.**

21 Q. What's the status of that lawsuit?

22 **A. It was dismissed.**

23 Q. It was dismissed as against you?

24 **A. Yes.**

25 Q. Okay. Was it dismissed on a motion to

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Page 10

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2 dismiss or summary judgement do you know?

3 **A. Summary judgement.**

4 Q. Have you filed any other lawsuits
5 including Nineteen eighty three -- strike that.

6 Have you filed any other lawsuits
7 or other proceedings including Article Seventy-eighty
8 proceedings that allege the same facts and circumstances
9 as set forth in your complaint in the present action?

10 **A. No.**

11 Q. Okay. Now, sir, you understand that
12 the testimony you give here today is under oath and is
13 required to be truthful?

14 **A. Yes.**

15 Q. With respect to the questions that I
16 ask you, if I ask you anything that you do not understand
17 or you require clarification to please let me know that,
18 all right? Yes?

19 **A. Yes.**

20 Q. Okay. And that brings me to the other
21 rule of the deposition. I require a yes, no, some sort of
22 --

23 **A. Oh, I'm sorry, yes. Yes, I apologize.**

24 Q. That -- that's fine. I just require
25 some sort of verbal response to my questions so that the

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Page 11

1 Fox v Lee - 9-6-2017 - Javell Fox

2 record is clear in terms of -- in terms of your response.

3 I can't take down a nod or a shake --.

4 A. Yes, yes, yes. I got you.

5 Q. All right.

6 A. I got you.

7 Q. It's easier said than done though.

8 Everyone forgets at some point.

9 A. Yeah, right.

10 Q. Okay. So what's -- what's your date
11 of birth, Mr. Fox?

12 A. October 26, 1982.

13 Q. And your social security?

14 A. XXX-XX-8941.

15 Q. Do you maintain a New York State
16 driver's license?

17 A. No.

18 Q. Have you ever filed for bankruptcy?

19 A. No.

20 Q. And as we sit here today -- we're in
21 Great Meadow Correctional Facility, right?

22 A. Yes.

23 Q. And you were transferred to here from
24 Attica Correctional Facility?

25 A. Yes.

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Page 12

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 Q. With respect to your present
3 incarceration what were you convicted of or pled guilty
4 to?

5 A. I was convicted of criminal possession
6 of a controlled substance.

7 Q. What degree?

8 A. Third degree.

9 Q. And that was for the sale of what?

10 A. No, that wasn't for the sale of
11 nothing. That was for the possession of -- of one bag of
12 heroin.

13 Q. How big was that bag of heroin?

14 A. Just one bag. They said it was one
15 bag. They tested it in the lab and since I had money on
16 me they charged me with intent to sell and somebody else
17 wrote a statement stating that was his heroin and I had
18 nothing to do with it. He had it notarized and everything
19 and I'm in a court right now on that issue.

20 Q. When -- okay. When was this
21 conviction? What year?

22 A. 2011. No, 2012. April.

23 Q. Okay. What county?

24 A. Oneida County.

25 Q. How long is your prison sentence for?

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Page 13

1 Fox v Lee - 9-6-2017 - Javell Fox

2 **A. Ten years.**

3 Q. So it was criminal possession of
4 controlled substance in the third degree?

5 **A. Yes.**

6 Q. Any other charges that you were
7 arrested on in addition to that criminal possession that
8 led to your present incarceration? Is that the only
9 conviction was the possession?

10 **A. Yes.**

11 Q. What year did you enter state prison?

12 **A. 2012 June.**

13 Q. What facility did you enter at?

14 **A. Elmira.**

15 Q. How long were you there?

16 **A. Maybe thirty-five, forty days.**

17 Q. Where did you go after that?

18 **A. Auburn Correctional Facility.**

19 Q. How long were you there?

20 **A. Two years.**

21 Q. And after Auburn where did you go?

22 **A. Eastern Correctional Facility.**

23 Q. How long were you there?

24 **A. About maybe a year and a month.**

25 Q. Do you recall the dates you were at

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Page 14

1 Fox v Lee - 9-6-2017 - Javell Fox

2 Auburn?

3 **A. Yes, actually from June 2012 to**
4 **September 2014.**

5 Q. Okay. After Eastern where did you go?

6 **A. Great Meadows. Here to this facility.**

7 Q. And what dates were you at Great
8 Meadow?

9 **A. From -- around October to December.**

10 Q. Of 2014?

11 **A. No, 2015.**

12 Q. 2015. So you were at Great Meadow
13 about a year?

14 **A. No. About forty -- forty days.**

15 Q. Oh, about forty days. All right.

16 Well, you said you were at Eastern from June 2012 to --.

17 **A. No, no, no. I was at Auburn from June**
18 **2012 --**

19 Q. All right.

20 **A. -- to September 2014. And I was at**
21 **Eastern from September 2014 to October 2015.**

22 Q. All right. Slow down. Let me just
23 make sure I write this down. All right. You were at
24 Auburn from June 2012 to 2014 -- to September 2014?

25 **A. Yes.**

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Page 15

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 Q. Okay. And, I'm sorry, you were at --
3 at Auburn from what dates?

4 A. **June 2012 to September 2014.**

5 Q. Okay. And, I'm sorry, and you were at
6 Eastern from what dates? September --?

7 A. **September 2014 to October 2015.**

8 Q. Got it. And if I misstate something,
9 you know, feel free to correct me.

10 A. **Okay.**

11 Q. The idea is to get this factually
12 correct. All right. And so you were at Great Meadow for
13 about forty days from October 2015 to I think you said
14 December of 2015?

15 A. **Yes.**

16 Q. Okay. And after Great Meadow where
17 did you go?

18 A. **To the special housing unit Upstate --**
19 **special housing unit.**

20 Q. Why were you transferred there?

21 A. **I was transferred there because the --**
22 **I believe Counselor Schulley and his sergeant here at this**
23 **facility forged some documentation which I never have no**
24 **access to type and I don't even know how to type.**

25 Q. Okay.

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Page 16

1 Fox v Lee - 9-6-2017 - Javell Fox

2 A. And then they put it on me because of
3 my hairstyle --

4 Q. Uh-huh.

5 A. -- because they wanted me out of the
6 facility and they wanted to give me a lot of time. So
7 they gave me the time and sit in this special housing
8 unit.

9 Q. Okay. And how long were you at the
10 special housing unit?

11 A. For sixty days.

12 Q. All right. So from approximately
13 December of 2015 to March of 2015, is that right?

14 A. December 15th -- December to February.

15 Q. To February?

16 A. Yeah. Of sixty days.

17 Q. Of 2015?

18 A. Yeah.

19 Q. Okay. And at -- after February 2015
20 where were you at?

21 A. Five Points Correctional Facility.

22 Q. Okay. And how long were you at Five
23 Points? What dates?

24 A. I was at Five Points from around
25 February to about April or May. Maybe sixty -- sixty days

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Page 17

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 **or seventy days.**

3 Q. And after Five Points where did you
4 go?

5 A. **Upstate Special Housing Unit.**

6 Q. So you went back to Upstate Special
7 Housing Unit?

8 A. **Yes.**

9 Q. Why were you sent there again?

10 A. **Because officers wrote me up for**
11 **refusing to cut my hair.**

12 Q. No disciplinary problems?

13 A. **No.**

14 Q. How long were you at Upstate Special
15 Housing Unit on that time?

16 A. **Maybe two weeks.**

17 Q. Okay. And after Upstate Special
18 Housing Unit where did you go?

19 A. **Attica Correctional Facility.**

20 Q. And other than the fact that you were
21 moved here for your deposition that's -- that's where you
22 resided prior to this -- this location?

23 A. **Yes.**

24 Q. Okay. How long have you been at
25 Attica?

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Page 18

1 Fox v Lee - 9-6-2017 - Javell Fox

2 A. Since June 2016 to -- to date.

3 Q. Okay. You ever served time in a
4 prison facility other than the sentence you're currently
5 serving?

6 A. Yes.

7 Q. Okay. What years was that?

8 A. 2010 August until 2011 June.

9 Q. What was that for?

10 A. Criminal possession of a controlled
11 substance.

12 Q. And what substance did you possess on
13 that occasion?

14 A. Heroin.

15 Q. Okay. And was it a criminal
16 possession of controlled substance third degree?

17 A. Was it a third or fourth. I forget.

18 Q. Okay. What county did you have that
19 conviction in?

20 A. Oneida County.

21 Q. Okay. And other than the -- the two
22 prison terms that you've already testified to have you
23 ever spent any other time in a New York State prison?

24 A. Yes. 2000 and I was incarcerated
25 again in 2005.

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Page 19

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 Q. So were you in from 2000 to 2005 or
3 they were two separate things?

4 A. Yeah, two separate.

5 Q. All right. So let's -- let's just
6 keep going back chronologically. So the -- the next time
7 you served a prison term prior to the 2010 incarceration
8 was in 2005?

9 A. Yes.

10 Q. Okay. And what was that for?

11 A. Criminal possession of a controlled
12 substance.

13 Q. Was that also heroin related?

14 A. No, that was crack cocaine.

15 Q. Okay. And was it a criminal
16 possession of a controlled substance third degree?

17 A. I think a fourth degree. I'm not
18 sure.

19 Q. Okay.

20 A. Yeah, fourth I think.

21 Q. And how long did you a serve prison
22 term in 2005? What dates?

23 A. From 2005 to 2008.

24 Q. So you did three years?

25 A. Yes.

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Page 20

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 Q. Okay. And then you said prior to 2005
3 you had another prison term in 2000?

4 **A. Yes.**

5 Q. And how -- what dates did that prison
6 term go through?

7 **A. From 2000 till 2001. Maybe eight**
8 **months.**

9 Q. Okay. And where was that -- what
10 county was that arrest in?

11 **A. New York County I think.**

12 Q. And what was that arrest or conviction
13 for?

14 **A. Criminal possession of a controlled**
15 **substance I think in the seventh or sixth degree. I can't**
16 **remember.**

17 Q. And for what drug were you in
18 possession of?

19 **A. Cocaine.**

20 Q. With respect to the 2005 incarceration
21 where was that criminal conviction obtained?

22 **A. 2005? Oh, Oneida County.**

23 Q. Oneida County? Other than the -- the
24 prison terms you've just described to me have you spent
25 any other time in prison?

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Page 21

1 Fox v Lee - 9-6-2017 - Javell Fox

2 **A. No.**

3 Q. What about jail time? Local jail
4 time, have you done any local jail time?

5 **A. No. Maybe -- no.**

6 Q. No?

7 **A. Probably parole violation or something**
8 **like that. But, no, I can't even remember those dates.**
9 **That was too far back.**

10 Q. Okay. Are you married?

11 **A. No.**

12 Q. Do you have any kids?

13 **A. Yes.**

14 Q. How many?

15 **A. I'm not going to tell you.**

16 Q. Huh?

17 **A. I'm not going to tell you that.**

18 Q. You're not going to tell me how many
19 kids?

20 **A. No. No.**

21 Q. Okay. Well, note my objection for the
22 record because if you continue to refuse to answer my
23 questions that I'm entitled to ask I'm going to go ahead
24 and, like I said, make a motion to the court.

25 **A. You're going to make a motion to**

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Page 22

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 dismiss because I won't tell you how many kids I got? I
3 didn't ask their mother can I tell about the kids because
4 that's not just my kids, Ms.

5 Q. This isn't a fight, Mr. Fox.

6 A. I'm not fighting.

7 Q. You sued this. I get to ask the
8 questions. You can place an objection on the record but
9 you're required to answer my questions.

10 How many kids do you have, Mr. Fox?

11 A. I'm not answering that.

12 Q. Okay. If you were to get out of
13 prison tomorrow where would you live?

14 A. I would live in New York City.

15 Q. Do you have family there?

16 A. Yes.

17 Q. What's the highest level of education
18 you've completed?

19 A. Bachelor's degree equivalent in
20 account.

21 Q. I'm sorry bachelor's degree?

22 A. Equivalent in -- in accounting.

23 Q. In accounting. Did you complete that
24 here in prison?

25 A. Yes.

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Page 23

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 Q. Any other specialized training or
3 certifications you've achieved here in prison?

4 A. No.

5 Q. When did you achieve your bachelor's
6 degree equivalency in accounting?

7 A. 2006.

8 Q. What's the last employment you've
9 held? What dates?

10 A. From 2011 until -- well, soon as I
11 came home from prison in June 2011 until I was
12 incarcerated in October 3rd, 2011 I was a janitor.

13 Q. Okay. Where?

14 A. For Employment Opportunity on Wall
15 Street.

16 Q. So in New York City?

17 A. Yes.

18 Q. Have you held any other positions
19 other than the janitor position in terms of employment?

20 A. Yes. I used to work for the United
21 Pickle Factory.

22 Q. What years?

23 A. From 2000 -- I came out of prison in
24 2008 -- 2009 maybe.

25 Q. Okay. When are you due to be released

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Page 24

1 Fox v Lee - 9-6-2017 - Javell Fox

2 from prison?

3 **A. 2023.**

4 Q. Okay. Have you ever filed a federal
5 or state tax return?

6 **A. Yes.**

7 Q. What years?

8 **A. 2011 -- yeah, did I say that?**

9 Q. 2011?

10 **A. 2000 -- yeah, maybe 2011 or 2001.**

11 **Yes.**

12 Q. Just those two years?

13 **A. Yes.**

14 Q. Are you on any medications as you sit
15 here today?

16 **A. No.**

17 Q. Anything that you're aware of that
18 would impede your ability to testify truthfully today?

19 **A. No.**

20 Q. Did you review any documents to
21 prepare for your testimony here today?

22 **A. No.**

23 Q. Do you maintain any sort of diary or
24 notes relative to the lawsuit we're here to discuss today?

25 **A. No.**

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Page 25

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 Q. So you don't have any Article Seventy-
3 eights pending currently?

4 A. No. Yeah, I do have -- well, it's
5 kind of pending but is -- I got the return date of
6 November 3rd I believe. So it's like not totally pending
7 yet but pretty much it's in -- I got an index number.

8 Q. All right. What's that about?

9 A. That's about I didn't get a
10 preliminary hearing for my parole violation. So since I
11 didn't get a preliminary hearing -- I mean, a -- a final
12 hearing they, you know, basically gave me time that I
13 shouldn't have got. So I put an Article Seventy-eight in
14 about that.

15 Q. So with respect to -- it's with
16 respect to a parole violation you received?

17 A. Yes.

18 Q. With respect to the complaints set
19 forth in your -- I guess it would be your amended
20 complaint at Docket Number Seventy-six I have that as the
21 operative complaint to file any grievances with respect to
22 the allegations contained in your -- in your complaint.

23 A. Say that again?

24 Q. Did you file any grievances with
25 respect to the allegations contained in your complaint?

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Page 26

1 Fox v Lee - 9-6-2017 - Javell Fox

2 A. Yes.

3 Q. Okay. When was the first grievance
4 that you filed?

5 A. I would say November 7th and November
6 9th, 2014.

7 Q. Which facility were you at?

8 A. Eastern Correctional Facility.

9 Q. What was the outcome of that
10 grievance?

11 A. One they didn't file. They refused to
12 file it. And the other one it went to C.O.R.C. and they
13 agreed with me in part. And they basically because the
14 I.G.R.C. supervisor and the administration kind of lied to
15 cover up, you know, the -- the grievance statement. I was
16 changing hairstyles and which was a lie because there's
17 eight pictures to show my hairstyles. And or they would
18 have agreed with me fully that it's unconstitutional for
19 me to have in keep lock and confined because of my
20 hairstyle.

21 Q. Okay. Any other grievances you can
22 recall filing relative to the allegations in the
23 complaint?

24 A. Yes, I filed maybe -- maybe thirty or
25 forty grievances to, you know, exhaust my administrative

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Page 27

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 remedies and, you know, to get relief on everything that -
3 - that's in my complaint.

4 Q. Where did you file these thirty to
5 forty grievances? Which facilities?

6 A. **Eastern Correctional Facility.**

7 Q. Okay. Any other facilities where you
8 filed grievances?

9 A. **Yes.**

10 Q. What other facilities?

11 A. **Auburn.**

12 Q. Okay.

13 A. **Five Points.**

14 Q. Okay.

15 A. **And this facility.**

16 Q. This -- this facility?

17 A. **Yeah, Attica.**

18 Q. Oh, Attica?

19 A. **Yes.**

20 Q. Not -- not Great Meadow.

21 A. **Yes, and Great Meadow, yes.**

22 Q. Okay. And Great Meadow?

23 A. **Yes.**

24 Q. Okay. So you just filed one at Great
25 Meadow during the time you were here for the deposition?

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Page 28

1 Fox v Lee - 9-6-2017 - Javell Fox

2 Was that at the last time you were -- you were here prior
3 to this?

4 A. Last time I was here -- prior to this
5 I was here -- I was here in May for a conference --
6 settlement conference. And when I was here last time as -
7 - as a housed convict here I filed grievances.

8 Q. Okay. So you're -- you're intimately
9 familiar with the -- the process with respect to filing
10 grievances in the New York State Prison System?

11 A. Yes.

12 Q. Okay. And you understand you have to
13 appeal them all the way up to CORC in order to exhaust
14 your administrative remedies?

15 A. Yes.

16 Q. And with respect to the one in 2014
17 you said you filed two. And one was -- you said they
18 refused to file but the other one went all the way through
19 to CORC?

20 A. Yeah, no, I didn't say I only filed
21 two. You asked me what was the first one I filed.

22 Q. Right.

23 A. In 2014 I probably filed ten
24 grievances maybe twelve. You should have -- I mean, I
25 know you sent me copies, I've had copies I -- I saved. So

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Page 29

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 I'm sure that you probably have them with you. Every last
3 grievance I ever filed I filed all the way up to CORC. If
4 they didn't get there then the I.G.R.C. supervisor failed
5 to file them because he's covering up for his -- his --
6 his coworkers. And that's what they do.

7 Q. So you're saying that you filed every
8 -- you appealed -- strike that.

9 You appealed every grievance all
10 the way up to CORC and that if none of them reached CORC
11 it was somebody else's fault and not yours?

12 A. Absolutely.

13 Q. Okay.

14 A. Even if -- like I said, some of them
15 didn't even get filed.

16 And C.O.R.C. got thirty days to
17 respond. If they don't respond in thirty days then I'm
18 able to file my loss suit. I took every provision.

19 Q. Are you specifically aware as you sit
20 here today of any instances where your grievances were not
21 transmitted to CORC per your instructions?

22 A. I'm -- I don't watch it go so like I
23 said I don't know how they transmit it. But I know what I
24 was told by T. Morrow (phonetic spelling) that certain
25 grievances he wasn't going to send.

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Page 30

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 Q. Who -- I'm sorry, who is this? What's
3 the name?

4 A. T Morrow. That's the grievance
5 supervisor. He told me specifically certain grievances he
6 wasn't going to file. And other grievances were handled
7 on a facility level as per Directive Forty-forty states
8 that if you get your remedy at the facility level it's no
9 need to appeal it and it's no need to go any further. So
10 certain issues was resolved at the facility level.

11 Q. Okay.

12 A. Pretty much could recall, you know,
13 everything that was resolved on the facility level because
14 -- and everything else. I went through it, so --

15 Q. Yes.

16 A. -- you know, it's pretty much in my
17 brain.

18 Q. Okay. Now with respect to the lawsuit
19 we're here talking about today you've -- you followed the
20 Court's decision and orders with respect to dismissal of
21 certain claims in your amended complaint, correct?

22 A. Say that again I'm sorry.

23 Q. With respect to the lawsuit we're here
24 talking about today, you've -- you've had the opportunity
25 to review the decisions and orders filed by the Court

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Page 31

1 Fox v Lee - 9-6-2017 - Javell Fox

2 dismissing certain claims in your amended complaint,
3 correct?

4 **A. Correct.**

5 Q. Okay. And with respect to the -- the
6 RLUIPA claims and your -- your hairstyle claims at Docket
7 Number Ten you understand that the Court ordered that
8 insofar as Plaintiff seeks monetary damages against
9 Defendants in their official or individual capacities
10 under RLUIPA those claims are dismissed pursuant to
11 Twenty-eight U.S.C. Section Nineteen fifteen E two B and
12 Twenty-eight U.S.C. Section Nineteen Fifteen A B. You --
13 you understand that's at Docket Ten, page six of twenty-
14 three?

15 **A. Yes. That's why I didn't add that**
16 **into my -- my summary judgement motion.**

17 Q. Okay. And with respect to your
18 summary judgement motion you received my papers where I
19 cross moved for summary judgement?

20 **A. Yes, I did.**

21 Q. Oh.

22 **A. Did you receive my papers where I**
23 **replied?**

24 Q. I just don't recall as I sit here.
25 And I would ask you to refrain from asking me questions

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Page 32

1 Fox v Lee - 9-6-2017 - Javell Fox

2 with respect to the case. It's not my deposition. It's
3 your deposition.

4 **A. All right.**

5 Q. With respect to your -- let's see --
6 with respect to your present hairstyle as you sit here
7 today it looks like it's shaved on the sides, you have
8 dreads on the top in sort of a Mohawk sort of fashion.

9 **A. Yes.**

10 Q. Okay. And the dreads are, would you
11 agree, about two to three inches long?

12 **A. Maybe -- probably in the back because**
13 **that pulled my hair out. But on the sides they're pretty**
14 **much long.**

15 Q. And how -- how long are the dreads on
16 the top then I'm sorry?

17 **A. Maybe like eight inches.**

18 Q. Okay. So the dreads are about eight
19 inches long?

20 **A. Yeah.**

21 Q. And you would agree with me then
22 they're long enough to weave together and creates pockets
23 in the top of your head?

24 **A. Yes.**

25 Q. Okay. Now with respect to this

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Page 33

1 Fox v Lee - 9-6-2017 - Javell Fox

2 present hairstyle when did you first start wearing this?

3 **A. About 2013.**

4 Q. And in 2013 had you -- you familiar
5 with the religious affiliation designation within the
6 prison symptoms? They ask you to pick a religious
7 affiliation or?

8 **A. Yes.**

9 Q. Okay. And in 2013 when you started
10 wearing the present hairstyle what was your religious
11 affiliation?

12 **A. My -- my religion and affiliation that
13 I chose to affiliate with since my religion is not held
14 here at this prison was the Rastafarian.**

15 Q. Wait. Back in 2013 weren't you Nation
16 of Islam?

17 **A. When I got to Eastern Correctional
18 Facility a couple of guys wanted me to go to a -- an event
19 and in order to go to that event I was trying to be a
20 guest but they said I couldn't be a guest so I had to
21 change the affiliation as far as DOCCS because it was too
22 late. And I changed it to N.O.I. to go to the event
23 because it don't really matter. It's not my religion
24 anyway, but it's an offspring of my religion.**

25 **And also I just wanted to make a**

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Page 34

1 **Fox v Lee - 9-6-2017 - Javell Fox**
2 statement that my hair can form any pockets. But as long
3 as it can be effectively searched it's not a safety or
4 security hazard. My hair can be effectively searched.
5 Anybody's hair could form any pockets whether dreads or
6 not.

7 Q. Okay. Well, I'm -- I'm glad you --
8 you have that worked out. With respect to 2013 then you
9 were in fact a Nation of Islam religious designation,
10 correct?

11 A. Correct.

12 Q. Okay. And your testimony today was
13 you decided to designate with Nation of Islam in order to
14 -- to go to an event -- a DOCCS held event?

15 A. A Nation of Island held event but
16 DOCCS allowed them basically have their religious service,
17 yes.

18 Q. Okay. So was the -- the event you
19 wanted to go to a religious service?

20 A. Yes. It was Saviors Day. It was a
21 Saviors Day event.

22 Q. Is that the only N.O.I. event that you
23 attended?

24 A. Yes, I was -- I believe I was keep
25 lock confined for every other event which was the next --

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Page 35

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 **yes -- yes, it was.**

3 Q. But you're telling me that despite the
4 fact you designated with Nation of Islam you weren't
5 actually a -- a practitioner of Islam at that time?

6 A. Well, my religion is Anunnaki. So as
7 being a Anunnaki religious members all of these religions,
8 offspring from Anunnaki. Anunnaki means from heaven to
9 earth. Anunnaki is the sole hold of all the secrets in
10 the universe. So you got Islam they represent peace.
11 Like we teach peace like true peace in my religion. So,
12 you know, it's an offshoot.

13 Q. Yes.

14 A. Like Mohammed -- I mean, you know, you
15 going on about it but, you know, I -- so I basically, you
16 know, I practice every -- every religion but in -- in the
17 solid form though, you know, so.

18 Q. All right. But -- but I want to get
19 back to if -- if you are -- do you identify or did you
20 identify in 2013 as being a Nation of Islam practitioner
21 or did you identify with something else in 2013?

22 A. I've identified my whole life since I
23 was eleven years with being a Anunnaki member. In DOCCS,
24 like I said, my religion is not held here so, you know, I
25 go to other religions like Nation of Islam, Moorish

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Page 36

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 **science, Temple of Rastafarian. As I said they're all**
3 **offshoots of my religion. When I get back to Attica I'm**
4 **going to sign up for -- for the Buddhist religious because**
5 **that's an offshoot my religion, you know, so.**

6 Q. Okay. So you're -- you're -- and
7 correct me if I'm wrong because I'm trying to understand
8 what you're talking about, you have identified as Anunnaki
9 since you were eleven.

10 **A. Yes.**

11 Q. And because every religion is an
12 offshoot of Anunnaki you feel comfortable registering
13 within the DOCCS parameters for any religion that they
14 offer?

15 **A. Pretty much, yes.**

16 Q. Okay. All right. So when did you
17 first start then the present hairstyle? You said that was
18 in 2013?

19 **A. Yes, that was in 2013.**

20 Q. Okay. What hairstyle did you have
21 prior to 2013?

22 **A. I had cornrow braids.**

23 Q. Did you have the shaved sides of your
24 hair?

25 **A. No.**

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Page 37

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 Q. And how -- how long were the cornrow
3 braids?

4 A. Maybe about almost like the same
5 length as my hair is now. Just a little shorter probably.

6 Q. So about eight inches?

7 A. Yeah, about five -- maybe five inches
8 probably.

9 Q. Okay. And that was while you were in
10 the DOCCS facility?

11 A. Yes.

12 Q. Was that hairstyle allowed as per
13 DOCCS directives or were -- did you have issues with that
14 hairstyle too?

15 A. Well, as far as the cornrow braids
16 it's allowed, yes. But as far as every hairstyle is
17 allowed long as it don't pose no threat to safety and
18 security per N.Y.C.R.R. Seventy-six twelve point four.
19 DOCCS directive is -- is being interpreted however the
20 officers want to interpret it in order for them to harass
21 prisoners. This is what they do.

22 Q. Okay.

23 A. N.Y.C.R.R. is clear on it.

24 Q. What was that section?

25 A. N.Y.C.R.R.

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Page 38

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 Q. I -- I understand what the --.

3 A. **Seventy-six twelve point four.**

4 Q. Seventy-six twelve point four. Okay.

5 A. **I sent you that too in -- in my reply.**

6 **You have it.**

7 Q. I don't recall seeing that but I'll
8 take a look. So you've maintained that the hairstyle that
9 you sit here and present today you've maintained that
10 since 2013?

11 A. **Yes.**

12 Q. Okay. And explain to me why the
13 hairstyle is required for your -- your religion? As I
14 understand it that's what your allegations are.

15 A. **Yes. Well, it's our freedom of**
16 **expression too.**

17 Q. Okay.

18 A. **But as far as my religious belief the**
19 **long hairstyle, once you become a certain -- to capacity**
20 **and I represent as far as the bear going into the hulk or**
21 **the lion going into the eagle that represents supreme**
22 **wisdom, true enlightenment which I do have and which I do**
23 **hold. As you can see all of the abuse I've been through**
24 **I've never once raised a violent hand to anybody, prisoner**
25 **or correction official and that's rare. I haven't even**

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Page 39

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 **had one fight in prison and I've been in the worst prisons**
3 **in the State of New York.**

4 Q. Okay.

5 A. And that's because of my religion.

6 Q. And when you say freedom of expression

7 --

8 A. Yes.

9 Q. -- what are you -- what are you
10 talking about? Because to me that's a completely
11 different thing.

12 A. Yes. Freedom is expression is
13 individuality. Like a person has freedom to express
14 theirself (sic) like you have bangs in your hair. That's
15 the expression. Some people don't have bangs.

16 Q. Uh-huh.

17 A. You know.

18 Q. So your hairstyle is a part of your
19 freedom of expression in terms of how you feel you should
20 be able to present yourself to the world?

21 A. Yes, as well as my religious symbol as
22 far as certain individuals in my spiritual order to
23 identify with who I am. And -- and my status that I hold
24 in my religion which is -- is actually equivalent to a
25 priest. And if you want to see that because, like I said,

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Page 40

1 Fox v Lee - 9-6-2017 - Javell Fox

2 my religion is so old, they just now rediscovering a lot
3 of things. And one of the -- the leaders of that is a man
4 called Zecharia Sitchin and he wrote a book called the
5 Twelfth Planet.

6 And a friend of mine just pointed
7 it out to me maybe a month ago. I haven't got a chance to
8 get my hands on the book, but in front of the cover you'll
9 see the artifact that he dug up of the priest, Anunnaki
10 priest and you would see the Mohawk haircut. Also two
11 yoga magazines that they took from me in Eastern had --

12 Q. I'm getting there.

13 A. -- okay. But I -- oh, all right. But
14 I just wanted to tell you what it had in it. It had the
15 actual priest with the locks, with the -- with the locks,
16 with the Mohawks on a -- on a stone walls.

17 Q. Okay.

18 A. So I could -- yeah, I could refer you
19 to those too.

20 Q. Anyone else that you know that
21 practices the Anunnaki religion?

22 A. Anunnaki, yes.

23 Q. Anunnaki, I'm sorry. And they're in
24 prison with you?

25 A. No, no prisoners.

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Page 41

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 Q. So are you the only Anunnaki
3 practitioner in prison that you're aware of?

4 A. Yes. In Attica, yes. It may be --

5 Q. Okay.

6 A. -- one other Anunnaki member and he's
7 actually in Eastern. But he's not of -- of a high priest
8 order. He just basically like what we would call a
9 regular civilian. He's just an a Nishi.

10 Q. Who -- who determined that you were a
11 high priest of Anunnaki?

12 A. Well, I had a guider and once you get
13 to a certain level as far as master -- in tens steps of
14 self-mastery then, you know, you become a priest of that
15 order. So actually I've mastered the ten steps, mastered
16 my anger.

17 Q. Who's your guider?

18 A. Well, my guider is in Charlotte, North
19 Carolina. His name is Quadir Bey.

20 Q. How do you spell that?

21 A. Q-U-A-D-I-R B-E-Y. And he initiated
22 me into the Anunnaki order when I was eleven and he guided
23 me until I was about fifteen. And I just kept all my
24 studies and, you know, basically I was guided right, you
25 know, so.

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Page 42

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 Q. Okay. Okay. With respect to, again,
3 your hairstyle, I'm trying to -- I'm trying to ascertain
4 what the difference was pre 2013 and now with respect to
5 why you feel you -- you have to have this hairstyle now.
6 Is it -- is it -- is it a matter of how you feel you need
7 to express yourself or is it a religious dictation?

8 A. Well, 2013 I reached my priesthood so
9 it's a -- a religious dictation as far as it being a
10 symbol. I'm a priest so, you know, this is what we do in
11 Anunnaki.

12 Q. Are priests in Anunnaki allowed to
13 have any other hairstyles?

14 A. No.

15 Q. And how do you know that?

16 A. I mean, priests, you know, we -- they
17 have freedom of choice but from what I know priests always
18 take on a Mohawk hairstyle. As far back as when we passed
19 this religion even priests in -- in Native American, you
20 know, they put on the --

21 Q. Yeah.

22 A. -- the Mohawk feathers and things like
23 that to represent, you know, but.

24 Q. Yeah.

25 A. So --.

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Page 43

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 Q. I'm sorry. I -- I just -- I'm just
3 trying to keep this on point.

4 A. Okay. I'm just trying to -- or I was
5 just trying to give you a brief history. I'm not trying
6 to lose you or anything.

7 Q. With respect to your current
8 hairstyle, why is it that you can't maintain any other
9 hairstyle as an Anunnaki priest?

10 A. Well, as an Anunnaki priest, you know,
11 it's important for me to be able to show that I'm a symbol
12 of light. And one way is through my hairstyle as well as
13 the fact that the Mohawk is a representation of the
14 subconscious and the consciousness coming together as one.
15 And, you know, the Mohawk hairstyle is that dictation.

16 Q. All right. In your papers your
17 original complaint you said the Mohawk was a cultural
18 representation of your heritage as a Native American. So
19 I'm just confused as to what it -- which one it is.

20 A. Well, like I said it's -- it's both.

21 Q. All right. It's both.

22 A. Native African and Native American,
23 because like I said, they're offshoots of my religion. I
24 was just trying to give a clear example because nobody's
25 familiar with my religion. So I was trying to give a

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Page 44

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 **clear example of the core relation.**

3 Q. Okay.

4 A. Because the natives they follow almost
5 like seventy percent of the same pattern as Anunnaki even
6 in America. Even in Mexico. And this is why you see a
7 lot of feathers and things like that as symbols. However,
8 the Anunnaki we represented it in our hair and we let our
9 hair lock up.

10 Q. So after you were registered as Nation
11 of Islam in order to attend an event your friends were
12 attending, did you at some point change your religious
13 affiliation within DOCCS?

14 A. In 2016 I believe -- what year I
15 changed back to Rastafarian? I can't remember. I changed
16 it back to Rastafarian maybe in 2016. Yeah, 2016 around
17 May.

18 Q. Okay. So prior to being Nation of
19 Islam you were Rastafarian?

20 A. Yes.

21 Q. Have you -- have you identified with
22 any other religion within DOCCS other than Nation of Islam
23 or Rastafarian?

24 A. No.

25 Q. Okay.

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Page 45

1 Fox v Lee - 9-6-2017 - Javell Fox

2 A. Moorish Science Temple. Yes, Moorish
3 Science Temple.

4 Q. I'm sorry.

5 A. Moorish Science Temple of America.

6 Q. Morris?

7 A. Moorish -- Moorish with a -- with a H
8 at the end?

9 Q. Moorish?

10 A. Yes. Science Temple of America.

11 Q. Science Temple.

12 A. Of America, yes. They believe in the
13 sciences and -- and the rituals and things like that. You
14 know, they all -- they also offshoot of the Anunnaki.
15 They come from Morocco.

16 Q. Okay.

17 A. They teach -- come from Morocco from -
18 -.

19 Q. All right. But did you ever identify
20 as Moorish within the DOCCS facility?

21 A. Yes.

22 Q. Okay. When -- when was that?

23 A. Maybe 2007.

24 Q. Okay. With respect to your current
25 prison sentence though you've only been Nation of Islam

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Page 46

1 Fox v Lee - 9-6-2017 - Javell Fox

2 and Rastafarian, correct?

3 **A. Correct.**

4 Q. Okay. With respect to your
5 disciplinary history, and I'm only talking about your
6 current incarceration, have you had any tier three
7 hearings?

8 **A. Yes, I have.**

9 Q. How many?

10 **A. I would say maybe three or four.**
11 **Maybe -- maybe four or five. I can't -- can't totally**
12 **recall.**

13 Q. All right. Were they all related to
14 your hairstyle or were they different things?

15 **A. No, two of them were.**

16 Q. Two of them were hairstyle related?

17 **A. No. Three of them -- I'm -- I'm going**
18 **to give you exact -- exact as many -- many was my**
19 **hairstyle. Three. Three was related to my hairstyle.**
20 **Two weren't.**

21 Q. Two were not, right?

22 **A. Yes.**

23 Q. Okay. Two -- I know one of the two
24 was related to contraband or marijuana possession within
25 the DOCCS facility?

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Page 47

1 Fox v Lee - 9-6-2017 - Javell Fox

2 A. Yes. And on that they planted that.

3 Q. Uh-huh.

4 A. Out of retaliation. I didn't have any
5 marijuana and they put that as point zero zero zero one of
6 a gram. That's not even anything and then Sergeant Bay
7 (phonetic spelling) told me he made a mistake. He made
8 them put one gram --

9 Q. Okay.

10 A. -- down there because that's what he
11 was trying to set me up with.

12 Q. Okay.

13 A. I didn't have --.

14 Q. And with respect to the second tier
15 three hearing --

16 A. Yes.

17 Q. -- what -- what was that concerning?

18 A. That was some papers that I seen at
19 the hearing briefly and that you sent to me stating that I
20 made a false document with a judge's name on it. At that
21 time I was keep locked, never off keep lock. I don't have
22 no access to no technology like that to do any forgeries.
23 And when they confiscated my paper that's when they gave
24 me my paperwork period. That's when they gave me that
25 misbehavior report at this facility. That was I'm -- I'm

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Page 48

1 Fox v Lee - 9-6-2017 - Javell Fox

2 almost sure that was Counselor Schulley and that was
3 definitely the sergeant. I got his name written down in
4 my next complaint.

5 Q. Okay. All right. So with respect to
6 Defendants' Maddison, Bay (phonetic spelling), Waugh,
7 Webbe, Russo, Lee, Simmons, Wenlen (phonetic spelling),
8 Miller, Williamson, Cruz, Sullivan and Vanacore there's a
9 -- an alleged first amendment freedom of expression claim.

10 A. Yes.

11 Q. Okay. When did that occur?

12 A. That -- that -- it never stopped. It
13 occurred all the way from September -- I mean, from,
14 excuse me, from November 9th all the way into I want to
15 say May 2015 -- May or June 2015. And then they got the -
16 - the I.G.R.C. C.O.R.C. decision stating that, you know,
17 there was no reason for them basically to punish me for my
18 hairstyle. That's when they stopped punishing me for the
19 hairstyle. That's when they planted the marijuana on me.
20 But all -- all the dates is -- is -- is chronologically
21 put in.

22 Q. All right. When they say they planted
23 marijuana --

24 A. Yeah.

25 Q. -- who specifically?

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Page 49

1 Fox v Lee - 9-6-2017 - Javell Fox

2 A. That -- that's -- that's not even
3 pertaining to this because that's not even in the
4 complaint. But Sergeant Barber (phonetic spelling) is a
5 part of that. Officer Krantz, and I forget the other two
6 officers' name. The other one officer name but I got his
7 name written down too but.

8 Q. All right. But that's not a part of
9 your lawsuit you're saying.

10 A. No, it's not. No, it's not.

11 Q. Okay. All right. With respect to
12 Defendant Maddison what dates did he violate your first
13 amendment freedom of expression? Tell me what he did
14 specifically just him.

15 A. Okay. When I was coming -- when I was
16 coming out of the barbershop on September -- on -- on
17 November 6th first he walked in the barbershop I was
18 getting the sides of my head shaved. And Officer Skred
19 she was there. She was the barbershop officer. She let
20 me go first. He came in, seen me getting a haircut. He
21 ain't say nothing to me when I was in the barbershop.

22 When I came out the barbershop he
23 stopped me. I had my -- my queen -- my king's crown on.
24 He told me take my crown off. He seen my hair. He told
25 me that my hairstyle is not allowed. I told him, listen,

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Page 50

1 Fox v Lee - 9-6-2017 - Javell Fox

2 this is my religious hairstyle as well as this is my
3 freedom of expression as well as the fact that there's no
4 reason for me not to have my hairstyle like this because
5 there's no -- there's no logical reason. There's no dread
6 to safety or security.

7 He told me my hairstyle is not
8 allowed. I walked away. The next week he sent Officer
9 Skred to write me a misbehavior report. She lied stating
10 that my hair was braided and everything because he told
11 her to write the misbehavior report.

12 Q. Who -- who's -- who's she again, I'm
13 sorry?

14 A. Officer Skred.

15 Q. Skra?

16 A. Skred, S-K-R-E-D.

17 Q. Okay.

18 A. She's not a part of the lawsuit
19 because he forced her to. She's in the facility where --.

20 Q. All right. Who forced her to?

21 A. Lieutenant Maddison because she -- she
22 work in the barbershop. She -- she know that my hair --.

23 Q. And you saw this personally?

24 A. She told me this personally and she
25 wrote it in the misbehavior report.

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Page 51

1 Fox v Lee - 9-6-2017 - Javell Fox

2 Q. Okay.

3 A. Lieutenant Maddison A.

4 Q. He forced her?

5 A. Coerced her. How -- how you say it?

6 Encouraged her. Why wouldn't she ask -- stop -- why --

7 why would she let me -- that's just like you letting me

8 get my hair cut is no problem? I'm in your barbershop

9 where you work at.

10 Q. Were you -- were you there though

11 between the conversations -- to overhear the conversations

12 between Maddison and Skred?

13 A. She told me. She made me privy to it.

14 Q. She told you.

15 A. And it's inside of the report.

16 Q. Got it. All right.

17 A. And then -- and then another incident

18 -- I'm giving you Lieutenant Maddison breakdown.

19 Q. Yes.

20 A. Then Lieutenant Maddison again got on

21 keep lock. I came down this was -- I can't -- I ain't got

22 no paperwork in front of me but I'm going to go off of my

23 memory -- he -- he also before -- after I got -- after

24 Lieutenant Simmons' dismissed the misbehavior report

25 because he knew that nothing was wrong with my hair and

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Page 52

1 Fox v Lee - 9-6-2017 - Javell Fox

2 that my hair wasn't braided. And that that was a lie,
3 Lieutenant Maddison and another prisoner walking by her
4 and Lieutenant Maddison upset about me leaving a
5 misbehavior report and I wrote the grievance against her
6 for him sending Officer Skred and for him harassing me and
7 retaliating about my haircut.

8 Officer Cruz, Officer Williamson
9 and Officer Waugh was waiting for me by the lunchroom.
10 This was around say December -- December -- I'm going to
11 say December 5th on or around.

12 Q. Okay.

13 A. No, no, no, no. Not December 5th. On
14 or around November -- November 20th I'm going to say, 20
15 something. Somewhere around there. It's in my paperwork.
16 But they came, frisked me for no reason all because of my
17 hair. Searched my cell all because of my hair. Then
18 after they did that they told -- a friend told me they
19 heard Lieutenant Maddison state that and he wrote that
20 down as a -- as a declaration that he heard Lieutenant
21 Maddison complaining and basically, you know, putting the
22 word out that he's upset about that. And since he's the
23 lieutenant Officer Cruz said that he was going to go give
24 me a misbehavior report. And -- and certainly he did.

25 Q. Okay.

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Page 53

1 Fox v Lee - 9-6-2017 - Javell Fox

2 A. And I got a misbehavior report for
3 altered pants which was for a pair of pants they stated I
4 a slit in them. And because the pants be tight, some of
5 the mediums, I cut the elastic. When I cut the elastic
6 they can't feel the elastic. He's stating that he felt in
7 -- in the sole (sic) of my pants elastic being cut or
8 slits they called it unless he put his hands in my pants,
9 but we'll get there. That's -- that's another Lieutenant
10 Maddison.

11 Then I think in was it March -- in
12 March I went down to the guardroom floor. Lieutenant
13 Maddison had was it Sergeant -- oh, Sergeant Vanacore
14 write me a misbehavior report for my hair. And then in
15 May he walked up and had Officer -- Officer -- I forget
16 his name -- but he had the officer write me another
17 misbehavior report. That's Lieutenant Maddison.

18 He seen my hair. He said oh you
19 still didn't cut your hair, huh? Okay. Write him up.
20 Officer wrote me up and I was on that unit for two months
21 with that same officer. And that officer never bothered
22 me. He walked by my cell every day. The officer came
23 back and said now I got to write you up. He said --.

24 Q. Which officer is this?

25 A. Oh, man I forget his name but I got it

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Associated Reporters Int'l., Inc.

Page 54

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 in -- in my -- in my reply to my summary judgement and --
3 and maybe in my amended facts. Forget his name though.

4 Q. All right. I'm going to maybe hold
5 off on Maddison specifically at this point. I want to
6 move off to this claims against -- unreasonable search
7 claims against Connor and Cruz.

8 A. Yes.

9 Q. What's that about?

10 A. Officer Cruz was searching me,
11 touching my privates and everything like that -- that's
12 for no logical reason. I was going into a hearing and
13 they searched me inside the hair and this is common
14 practice. Before I walk into the hearing room the officer
15 searched me. He's designated there. Officer Cruz knows
16 that.

17 He begins to search me before I go
18 into the hearing just to harass me, just to retaliate
19 against me and just to violate me and abuse me. And
20 during that search he's touching my privates.

21 Q. Okay.

22 A. Officer Williamson he frisked me
23 outside of the -- of the -- of the lunch.

24 Q. But you're -- you're jumping all over
25 the place. Let me ask the questions because you're just

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Page 55

1 Fox v Lee - 9-6-2017 - Javell Fox

2 going and going and going and I can't followed you and
3 you're talking too fast and I -- it's -- it's -- you --
4 you -- I know you know what you're talking about but I'm
5 not there and I don't know what you're saying so let me --
6 .

7 **A. I thought you told me about Cruz --.**

8 Q. Let me -- let me lead your through.
9 You just -- you're just spewing and I want to keep you
10 focused on dates and times. With respect to Cruz you said
11 before going into a hearing it's common practice to be
12 searched. He searched you and you said he touched your
13 private areas.

14 **A. Yes.**

15 Q. What was the date of that incident?

16 **A. Date of that incident was around March**
17 **20th.**

18 Q. Do you remember the year?

19 **A. 2015.**

20 Q. Okay.

21 **A. The next incident --.**

22 Q. Did you file a -- a grievance on that?

23 **A. Yes, I did.**

24 Q. Okay. And did you bring it up to

25 CORC?

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Page 56

1 Fox v Lee - 9-6-2017 - Javell Fox

2 A. It don't go to CORC. Sexual
3 harassment has its own grievance mechanism. Once -- per
4 Directive Forty-forty once you filed a grievance on sexual
5 harassment they already -- they have their own private
6 investigation.

7 Q. Okay.

8 A. They exhaust their remedies.

9 Q. And what was the outcome of that
10 investigation?

11 A. They didn't get -- they don't tell
12 you.

13 Q. They don't tell you?

14 A. No, they don't.

15 Q. Okay.

16 A. It's weird.

17 Q. Did he -- all right. So what you're
18 saying there is it's not that he's -- the fact that he
19 searched you that's the problem. It's that he -- he
20 touched your private areas that -- that's the problem? He
21 went too far in the search?

22 A. It's both.

23 Q. Okay.

24 A. Because he -- I'm not -- I'm not here
25 to be searched. If I got to get searched then I got to

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Page 57

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 **get searched. But if I don't don't -- don't searched me**
3 **just because you want to harass me and retaliate against**
4 **me and abuse me.**

5 Q. Okay. But you -- going into a hearing
6 it's -- it's common practice to be searched, correct?

7 A. Correct. And they have an officer
8 designated for that.

9 Q. Okay.

10 A. Yeah, escort officers they to escort
11 you to the hearing and you go into the room.

12 Q. But you don't like it.

13 A. It's not about what I like. It's
14 about the practice. Nobody likes to be searched.

15 Q. Okay. All right. With respect to --.

16 A. And that's not the only time. I'm
17 going to give you more dates. In -- in February, on
18 around February Officer Cruz searched me again on a sexual
19 harassment search.

20 Q. Was this in February of 2015?

21 A. 2000 -- 2015, yes. Twice in -- in
22 February 2015.

23 Q. Okay. So he searched you again.

24 A. Yes.

25 Q. Okay.

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Associated Reporters Int'l., Inc.

Page 58

1 Fox v Lee - 9-6-2017 - Javell Fox

2 A. Going to mental health he searched me
3 going to mental health and coming from mental health. He
4 made -- and he spread my legs and I had a cane, pushing me
5 over, kicking my feet, rubbing against my private hard,
6 leaning up against my buttocks, rubbing up on my thighs
7 just to get me to -- provoking me and just -- just abusing
8 me.

9 Q. Okay.

10 A. And, again, in --.

11 Q. All right. With respect to the March
12 2015 incident where you say Cruz touched your privates
13 while searching you did you go and report this to anyone
14 in medical?

15 A. I can't -- I can't --.

16 Q. Did you go for medical treatment?

17 A. No, I didn't. I just wrote the report
18 -- the grievance report --

19 Q. Okay.

20 A. -- and they sent it to the
21 investigator. Oh, I told Lieutenant Simmons --

22 Q. Okay.

23 A. -- when he -- when he searched me on
24 March 27th for another hearing.

25 Q. Okay. My question was did you go to

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Page 59

1 Fox v Lee - 9-6-2017 - Javell Fox

2 medical. And as far as I can tell you said no.

3 **A. No.**

4 Q. You didn't seek any medical treatment?

5 **A. No.**

6 Q. Okay. With respect to the second
7 incident with Cruz where he allegedly touched your
8 privates in February of 2015 during a search and kicked
9 your feet out, did you go to medical -- seek medical
10 treatment for that incident?

11 **A. Mental health.**

12 Q. You went to mental health?

13 **A. Yes. I seek mental health treatment**
14 **for that.**

15 Q. All right

16 **A. I talked to mental health.**

17 Q. Had you ever sought mental health
18 treatment prior to February of 2015?

19 **A. Yes.**

20 Q. Okay. When? When was the first date
21 you sought mental health treatment?

22 **A. Maybe -- no, you're right. Probably -**
23 **- probably February, yeah, I started seeking mental**
24 **health, yeah. January or February. I can't remember the**
25 **exact date.**

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Page 60

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 Q. What was it before the Cruz incident
3 that you started seeing mental health --

4 A. Yes.

5 Q. -- because you were on your way to
6 mental health before that incident?

7 A. Yes. Before the Cruz incident. Yes,
8 it was.

9 Q. And what was the mental health for?

10 A. For the constant abuse about my hair.

11 Q. Okay.

12 A. Me being locked up.

13 Q. All right. So you started seeing
14 mental health services because people abused you because
15 of your hairstyle?

16 A. Yeah, because I was being confined by
17 my hair and it began depressing, yes.

18 Q. Okay. You -- at any point were you
19 put on any medications for your mental health?

20 A. I don't -- I don't take medication in
21 my religion. But they offered me medication for
22 depression, anxiety but I turned it down.

23 Q. Okay. When is the last date that you
24 sought mental health treatment?

25 A. They said that if I wouldn't get

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Page 61

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 medication then they really couldn't do anything for me,
3 so maybe in March or -- maybe April, May.

4 Q. Of 2015?

5 A. 2015, yeah, I can't tell you.

6 Q. So you haven't had any sort of
7 treatment for mental health issues since March or April of
8 2015?

9 A. Yes.

10 Q. All right. All right. So you -- you
11 described to me the second incident with respect to Cruz.
12 Was there a third? Was there only two?

13 A. And then it's another one on March
14 27th I told Lieutenant Simmons that Officer Cruz sexually
15 frisked me again and banged my head against the wall. I
16 told Lieutenant Simmons that he need to move me from the -
17 - from the company with Officer Cruz. And at the hearing
18 Lieutenant Simmons made a call because he seen the knot on
19 my head. He made the call and he told them to move me to
20 B three away from Officer Cruz. And Lieutenant Simmons
21 told me don't make no mention of what happened. Let it
22 go, I'm going to B three and I be safe there. And then on
23 March 27th when I got to B three I was so depressed I had
24 a heart attack.

25 Q. So depression caused your heart

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Page 62

1 Fox v Lee - 9-6-2017 - Javell Fox

2 attack?

3 A. Stress, emotion, stress, something
4 caused it. Yeah, I had a heart attack, yeah. And --
5 yeah, that was crazy. I couldn't believe it.

6 Q. Okay. With respect to your heart
7 attack what treatment did you get?

8 A. They put me on some type of stuff all
9 over my body and -- and taped things all over my body and
10 read -- read my pulses and --.

11 Q. Did you go to the hospital?

12 A. Yeah -- oh, yeah, yeah. They rushed
13 me to the hospital. They rushed me to medical, yes.

14 Q. Which hospital?

15 A. I went to medical in the facility.

16 Q. Oh, just medical in the facility?

17 A. Facility, yes.

18 Q. Did you ever leave the facility for
19 medical treatment?

20 A. No, I didn't have to leave the
21 facility.

22 Q. And who told you had a heart attack?

23 A. It was a -- a male heart attack. Was
24 the nurse -- I forget her name.

25 Q. Okay.

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Page 63

1 Fox v Lee - 9-6-2017 - Javell Fox

2 **A. And I had documentation. I sent that**
3 **to you as well. It's in my records.**

4 Q. And what year did you have this heart
5 attack? What date?

6 **A. March 27, 2015 at about ten thirty at**
7 **night.**

8 Q. Okay.

9 **A. It was a narrow one but it was heart**
10 **attack.**

11 Q. Have you had any other heart attacks
12 since then?

13 **A. No. I don't smoke, drink, nothing. I**
14 **exercise.**

15 Q. Did you ever smoke?

16 **A. No.**

17 Q. You've never smoked in your life?

18 **A. No.**

19 Q. What about drinking? You ever drink?

20 **A. Yeah, took occasional drinks, yeah.**

21 Q. Okay. With respect to your claim that
22 Webbe, Lee and Simmons denied you access to reading
23 materials including religious reading materials, was that
24 in reference to these yoga magazines you talked about?

25 **A. Yes.**

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Page 64

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 Q. So at some point did somebody search
3 your cell and locate yoga magazines?

4 A. They located more than just yoga
5 magazines. They located magazines, newspapers and
6 everything.

7 Q. How many magazines, newspapers did you
8 have?

9 A. Books -- I had fourteen books because
10 you're allowed twenty-five books. But I had fourteen
11 books and I had fifteen magazines and three newspapers.

12 Q. How many magazines are you allowed?

13 A. Fifteen.

14 Q. And how many newspapers did you have?

15 A. Three.

16 Q. And how many of those were you
17 allowed?

18 A. I'm not sure. Probably lots.
19 Newspapers every day. I don't think there's a limit on
20 newspapers.

21 Q. All right. And on what date did they
22 take your reading materials?

23 A. Around -- sometimes in -- sometime in
24 May I believe.

25 Q. May of 2015?

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Page 65

1 Fox v Lee - 9-6-2017 - Javell Fox

2 **A. Yes.**

3 Q. And were these three magazines your --
4 were they all yoga magazines or what were they?

5 **A. Just two magazines were yoga**
6 **magazines.**

7 Q. What was the third one?

8 **A. What third one? I said I had fifteen**
9 **magazines, three newspapers.**

10 Q. Oh, sorry. Thank you. So you had
11 fifteen magazines.

12 **A. Yeah.**

13 Q. Got it. All right. And two of them
14 were yoga magazines?

15 **A. Yes.**

16 Q. What other types of magazines did you
17 have?

18 **A. Magazines on enlightenment, bikes,**
19 **houses, boats, assortment.**

20 Q. Okay.

21 **A. National Geographic's.**

22 Q. How did you get these yoga magazines?

23 **A. Well, a friend of mine gave them to me**
24 **because he get a subscription.**

25 Q. Friend in prison?

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Page 66

1 Fox v Lee - 9-6-2017 - Javell Fox

2 **A. Yes.**

3 Q. Another inmate?

4 **A. Yes.**

5 Q. So another inmate has a subscription
6 to yoga magazines?

7 **A. Yes.**

8 Q. And he gave them to you?

9 **A. Yes.**

10 Q. Who was that? What's his name?

11 **A. I can't remember his name. It's been**
12 **so long since I seen him.**

13 Q. Where did he give these to you? Which
14 facility?

15 **A. Eastern.**

16 Q. Was that at or about May of 2015 that
17 he gave them to you or had you had them a while?

18 **A. Yeah, probably around May, yeah. Yes.**

19 Q. How long had you had them before they
20 were confiscated?

21 **A. Maybe eight days, seven days.**

22 Q. Okay. And these yoga magazines, why
23 are you claiming that these are religious materials?

24 **A. Well, because that's a part of my**
25 **religion, yoga, meditation. That's part of my religion.**

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Page 67

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 **It's just like a Christian getting a book called the Daily**
3 **Bread. That's their religious material even though it's a**
4 **little magazine.**

5 Q. Okay. Do you do yoga?

6 A. Yes, I do.

7 Q. How often?

8 A. Now in prison I'm slacking. Maybe
9 three times a week.

10 Q. And prior to prison did you do yoga?

11 A. Yes, I did.

12 Q. Okay. How often?

13 A. Maybe two times a day.

14 Q. Did you go somewhere specific for yoga
15 classes or did you just do them on your own?

16 A. Prior to prison I was running a
17 spiritual group of Anunnaki so I actually was teaching
18 yoga and meditation.

19 Q. All right. So you ran a spiritual
20 group on Anunnaki.

21 A. Yes.

22 Q. Where was that at?

23 A. This was in Manhattan Harlem on 137th
24 Street between 5th Avenue and Madison.

25 Q. What years were you running this

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Page 68

1 Fox v Lee - 9-6-2017 - Javell Fox

2 group?

3 A. From 2009 maybe till current -- till
4 my current incarceration.

5 Q. When you say you were running this
6 religious group, what -- what were you doing?

7 A. Instructing -- instructing in
8 basically what candles to light, what was good colors to
9 wear for certain energies, certain yoga positions and
10 mediation, dealing with the chakras.

11 Q. Did you have anyone assisting you in
12 this or was this just your own?

13 A. Yeah, this was just my own. I didn't
14 have assistance.

15 Q. All right. What was the address
16 again? It was 137?

17 A. Between -- excuse me, between Lenox
18 and 59 -- not 59. Lenox and 5th Avenue.

19 Q. So 137th Street you said Manhattan?

20 A. Yes.

21 Q. Is there an apartment number?

22 A. Yes.

23 Q. What number is it?

24 A. Two C.

25 Q. Was this being run out of your own

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Page 69

1 Fox v Lee - 9-6-2017 - Javell Fox

2 personal apartment or was it a -- an actual business?

3 A. No, it's a -- a personal -- it's
4 personal. It's not a business.

5 Q. Did you have people attending your
6 classes or was it just for your own personal benefit?

7 A. Yes. I had probably about seven
8 people attending.

9 Q. Uh-huh. Did you -- they pay you for
10 these services?

11 A. No, it's not a service. It's just a -
12 - you know, for their own what you say religious
13 enlightenment.

14 Q. All right. All right. With respect to
15 these -- the first amendment access to the court's claims
16 against Calao Jennings (phonetic spelling) and Lablatte
17 (phonetic spelling).

18 A. Yes.

19 Q. The access to the court claims you
20 were trying to appeal a criminal conviction to the Fourth
21 Department?

22 A. No, I wasn't trying -- I already had
23 an appeal and I had a supplemental brief to put in. And -
24 - and that supplemental brief had a specific date. And
25 Lablatte held that for maybe two weeks, mailed it. And

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Page 70

1 Fox v Lee - 9-6-2017 - Javell Fox

2 since it was late it was dismissed. And I had a -- a
3 civil action against the City of Utica and that was
4 already in the appellate division because the Defendants'
5 appealed it. The Supreme Court already ruled in my favor
6 basically that I filed my complaint properly.

7 And they state in their since I
8 didn't file a summons that I didn't have jurisdiction when
9 the judge told me that all I had to do was file a verified
10 complaint. And but that's what the judge said I should
11 have been able to argue that. But since I couldn't get
12 copies, access to the court, I wasn't even able to argue
13 that or make copies of that paperwork to show to the judge
14 that the Defendants' appealed to as well as the fact that
15 I couldn't get Article Seventy-eights done or anything
16 because I had no access to the court.

17 Q. Yeah, but I -- I want to -- I want to
18 talk about specifically what you've alleged in this --

19 A. That's what I alleged though.

20 Q. -- hundred and eleven page complaint.

21 A. But that's what I alleged. Article
22 Seventy-eights --.

23 Q. Yeah, but which -- which specific
24 action were you trying to appeal?

25 A. I wasn't trying to appeal anything. I

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Page 71

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 **already had my -- my action in the appellate division. I**
3 **wasn't trying to appeal --.**

4 Q. Okay. So you had already filed an
5 appeal with the appellate division --

6 A. Yes.

7 Q. -- fourth department, right?

8 A. Yes, I did.

9 Q. And you were trying to file a
10 supplemental brief?

11 A. Yes.

12 Q. So you had already appealed it and
13 perfected the appeal?

14 A. Yes.

15 Q. You were trying to brief it further,
16 correct?

17 A. Not -- not brief it further. It was
18 already had a date for my supplemental brief to be in.

19 Q. Okay.

20 A. And I missed that deadline because
21 Diane Lablatte and Ms. Jennings kept on holding the mail
22 not sending it out. Q. So you owed money in postage?

23 A. Huh?

24 Q. Did you owe money in postage?

25 A. Yes.

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Page 72

1 Fox v Lee - 9-6-2017 - Javell Fox

2 Q. Okay.

3 A. But that don't stop the fact of
4 mailing because it goes through disbursement. I write
5 that Calao letter know them know about I need access to
6 the law library and he don't do anything. I need copies,
7 he don't do anything.

8 Q. Okay. On what date do you claim that
9 you were denied access to the court by Calao Jennings and
10 Lablatte? Give me the dates.

11 A. November -- November -- April 2015.
12 April 2015, November 2014 and all throughout as far as me
13 not being able to fill out certain Article Seventy-eights
14 as far as what -- the issues with the disciplinary with my
15 hair. So I had no way to file Article Seventy-eights as
16 they didn't want to file my grievances pertaining to the
17 due process violation because they were stating that it
18 was an issue with disciplinary.

19 So they didn't want to file it.

20 And only remedy I had was Article Seventy-eight. But
21 since I couldn't get proper access to the court from Dep.
22 Calao I couldn't even do research or do a proper Article
23 Seventy-eight on the issue. And I wasn't able to get
24 copies either about that. Then she threw away my mail.

25 Q. Okay. You have filed Article Seventy-

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Page 73

1 Fox v Lee - 9-6-2017 - Javell Fox

2 eights however have you not?

3 A. No, I didn't.

4 Q. You've never filed an Article Seventy-
5 eight?

6 A. I never filed an Article Seventy-eight
7 at Eastern, no, I have not. Especially not pertaining to
8 my issues in my hair.

9 Q. Okay.

10 A. Anyone I filed was an issue that I
11 already researched. And this one is a brand new one I
12 filed at Attica right now.

13 Q. All right. So if I understand you
14 correctly you're saying you were denied access to the
15 courts because Calao wouldn't make copies. Makes copies
16 of what specifically?

17 A. He wouldn't -- specifically he
18 wouldn't make copies of the -- the decision and order from
19 the Supreme Court judge stating that I was only given
20 instructions to file a verified complaint. He wouldn't --
21 he wouldn't -- yeah, basically he wouldn't make copies of
22 the briefs or anything because I got to do ten briefs.
23 And then on top of that he wouldn't allow me access to the
24 court so I could research how to do Article Seventy-eight
25 pertaining to my hair issue. And I wouldn't be able to

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Page 74

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 **get copies anyway because he was taking me through a**
3 **runaround.**

4 Q. Prior to your time at Eastern had you
5 filed an Article Seventy-eight?

6 A. Yes, I did. I filed one in Auburn.

7 Q. Okay.

8 A. And I had ample access to the law
9 library.

10 Q. Let's talk about the excessive force
11 claim you have against Cruz. You've got an Eighth
12 Amendment excessive force claim and sexual harassment
13 claim against Cruz. You're not -- you're not saying that
14 he beat you up or caused you physical injury, right?
15 You're saying that he inappropriately touched you during
16 frisking?

17 A. No, I told you that March 27th he
18 banged my head against the wall by restriction. No, no,
19 no, not March 27th. Excuse me. I'm sorry about that. He
20 ends up searching me in February, excuse me. He searched
21 me in February and he banged my head against the wall in
22 February when I was coming to go to keep lock recreation.

23 Q. All right. This was in February 2015?

24 A. Yes. I don't -- like I said I don't
25 remember the date.

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Page 75

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 Q. So when he was searching you he banged
3 your head against the wall?

4 A. Yes, because I told since he had
5 sexually harassed me I told him I didn't want him to
6 search me.

7 Q. Okay.

8 A. And then he stated get on the wall. I
9 said listen I got the frisk officer waiting down there by
10 the -- by the keep lock recreation. And since he's by the
11 keep recreation he search all keep lock prisoners. There
12 was three of us going out. Two guys walked past, Cruz
13 said nothing to them because he was no reason to search
14 them. When I came he told me get on the wall. I said
15 Cruz you keep on touching my private. Cruz told me get on
16 the wall. Other officer said don't worry about it, get on
17 the wall. I got on the wall, Cruz lifted my pants up and
18 banged my head against the wall.

19 Q. Where -- where was this?

20 A. This was in Eastern Correctional
21 Facility.

22 Q. Yeah, but where in Eastern?

23 A. Oh, this was coming downstairs from B
24 -- from West wing.

25 Q. West wing?

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Page 76

1 Fox v Lee - 9-6-2017 - Javell Fox

2 A. Yes.

3 Q. Okay. So he bumped your head against
4 the wall. Did you go for medical treatment?

5 A. No.

6 Q. With respect to the other two
7 incidences involving Cruz where were those located? Those
8 were at Eastern, correct?

9 A. Yes.

10 Q. Where were -- where was each incident
11 located within Eastern?

12 A. One was on the guard room floor.

13 Q. Garvin floor?

14 A. Guard room floor.

15 Q. Guard room floor. And that was the
16 February 2015?

17 A. Both of them happened in February.
18 And one was on the guard room floor and the other one was,
19 like I told you, by -- coming before I go to recreation,
20 coming down West wing stairs.

21 Q. Right.

22 A. And the third one was outside of the
23 frisk room.

24 Q. Okay. Just about done. Just want to
25 take a minute and look through my notes.

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Page 77

1 Fox v Lee - 9-6-2017 - Javell Fox

2 A. And I not -- never went down. That's
3 why when I had went into the hearing in May -- March 22nd
4 --.

5 (Off the record 1:00 p.m.)

6 THE COURT REPORTER: She's off the
7 record I think.

8 THE WITNESS: All right. Okay.

9 THE COURT REPORTER: You off? All
10 right. Just hold on.

11 (On the record 1:01 p.m.)

12 BY MS. LISI-MURRAY: (Cont'g.)

13 Q. Mr. Fox, there's an allegation about a
14 period of time that you were allegedly confined to a cell
15 that had no slot in the door to pass food trays through.

16 A. Yes.

17 Q. Okay. Where was that at?

18 A. That was on South Hall on twelve
19 company, eighteen cell.

20 Q. Which facility?

21 A. Eastern Correctional Facility.

22 Q. So you're claiming that there was a --
23 no slot in the door in which to pass food trays?

24 A. Yeah.

25 Q. Did somebody open the door to pass you

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Page 78

1 Fox v Lee - 9-6-2017 - Javell Fox

2 your food tray?

3 A. No.

4 Q. So how did you get your food tray?

5 A. The -- what they call the porter he
6 bring the tray. He slid -- he sit it on the window sill.
7 What I got to do is because the officers all be downstairs
8 but this is upstairs on the third floor, so they all hang
9 downstairs. What I got to do is grab it, slide it, grab
10 it, slide it, get on the chair, grab it, slide it, take
11 the top off, put it up, pull it all the way up to the
12 ceiling down and then come down off the chair and sit it
13 down, eat my food. This is an everyday occurrence.

14 Q. And this porter is another inmate?

15 A. Yes.

16 Q. Okay. And he's the one who hands your
17 food out?

18 A. Yes.

19 Q. Which -- what was this porter's name?

20 A. Oh, man, I forget but I -- I believe
21 his cell was maybe twenty or twenty-one cell. I mean, I
22 used to talk to him all the time. I never -- I don't
23 remember his name though. And I meant to get a
24 declaration from him but they had moved me to another
25 side.

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Page 79

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 Q. Okay. And you claim that the
3 conditions in this cell were cold and dirty.

4 A. Yes.

5 Q. And how cold was the cell?

6 A. Well, they were doing renovations on
7 the -- on the windows, so might have been -- might have
8 been literally like twenty degrees, eighteen degrees.
9 Even officers was wearing their hat, gloves and coat. It
10 was freezing down there. And the cell was just -- it was
11 just filthy.

12 Q. Anybody else complain about the cold
13 that you're aware of?

14 A. Yeah, every -- everybody.

15 Q. Every -- just everybody?

16 A. Even -- even officers, yeah.

17 Q. Okay. You filed a grievance on that
18 didn't you?

19 A. Yes.

20 Q. Okay. And somebody investigated that?

21 A. I don't believe there had to be an
22 investigation because they knew it was cold. And they
23 just basically stated that due to renovations there was
24 nothing that could be done.

25 Q. How long was it cold?

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Page 80

1 Fox v Lee - 9-6-2017 - Javell Fox

2 A. I probably was in that -- down in that
3 area for maybe -- oh, it was cold for maybe nine, ten
4 days.

5 Q. Okay.

6 A. Then -- and the heat, they put the
7 heat on.

8 Q. And you're telling me it was below
9 freezing, twenty degrees in that cell?

10 A. Yeah, not even just in the cell. All
11 over the whole gallery. Maybe twenty degrees --

12 Q. Okay.

13 A. -- twenty-five degrees, yeah.

14 Q. Did you -- did you have any ability to
15 take the temperature or confirm the degrees?

16 A. Well, I'm not -- I'm not a fool, you
17 know, so I know like what weather is. You know, I'm
18 pretty much -- I could tell you the weather in here right
19 now probably. I could -- I know the weather.

20 Q. Did water freeze in your cell, Mr.
21 Fox?

22 A. Did the water freeze over in the cell?

23 Q. Yeah.

24 A. The water was in the pipes.

25 Q. Uh-huh. Did the pipes freeze? Were

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Page 81

1 Fox v Lee - 9-6-2017 - Javell Fox

2 you able to run water in your cell?

3 A. It's impossible for the pipes to
4 freeze because the pipes is behind walls. So the pipes is
5 not on the gallery.

6 Q. Okay.

7 A. That's like it being cold in here. It
8 might not be cold out there.

9 Q. Did you have access to running water
10 while in that cell?

11 A. Yes.

12 Q. Okay. Did the water run?

13 A. Yes.

14 Q. Okay then. With respect to -- with
15 respect to the -- the coldness and dirtiness of the cell
16 though you filed a grievance, right?

17 A. Yes.

18 Q. Did you appeal up to CORC?

19 A. Well, they handled it as far as
20 administrative wise. As far as facility level.

21 Q. So it was not appealed to CORC?

22 A. They never sent it to CORC because per
23 Directive Forty-forty if they remedy it then it's -- it's
24 -- is exhausted. So they exhausted it due to facility
25 level.

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Page 82

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 Q. Okay. So it's your testimony that the
3 facility remedied the situation with respect to the -- the
4 coldness and dirtiness of your cell?

5 A. That's what they told me. They moved
6 me to --

7 Q. Okay.

8 A. -- to another cell probably two, three
9 cells down because I didn't only write the grievance on
10 that. I wrote the grievance on the fact that it took a
11 hour to open the cell to give me my food also. So they
12 moved me to another cell. And when they moved me since I
13 had the cane they had the porter come and clean the cell
14 for me. And then they had feed up slot and I got my food
15 through the slot after that. Because it's only two cells
16 on each company with feed up slots.

17 Q. So you had a feed up slot once they
18 moved you out of that cell?

19 A. Out of the cell upstairs. They moved
20 me down to the flats, yeah, because I end up hurting
21 myself real bad and I was on a cane.

22 Q. All right. So how many days were you
23 without a feed up slot in your cell?

24 A. Upstairs where I was probably thirty-
25 eight days probably.

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Page 83

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 Q. Okay. And you said you had a cane
3 because you fell and hurt yourself if I remember correctly
4 in the complaint.

5 A. Yes.

6 Q. What happened?

7 A. Because I was getting the feed up slot
8 -- feed up thing through the top I end up having to jerk
9 it and I end up slipping off the chair. And they took me
10 to medical, gave me a steroid shot, admitted me into the
11 medical infirmary and kept me there for like three days.
12 Kept checking on me then they gave me a cane.

13 Q. What was wrong with you?

14 A. They don't know. They just said that
15 I had a lump on my back and they can't really tell back
16 injuries what's wrong, so.

17 Q. Okay. I recall looking at your
18 medical records. I sent you copies of them. You fell on
19 ice at one point prior to that.

20 A. No, and I didn't fall. I ended up
21 going to recreational area and I almost fell --

22 Q. You almost fell?

23 A. -- because I had the cane -- yeah,
24 because I had the cane. I never fell.

25 Q. Okay. When -- when did you first get

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Page 84

1 Fox v Lee - 9-6-2017 - Javell Fox

2 assigned a cane?

3 **A. I got assigned a cane December 26.**

4 **Q. What year?**

5 **A. 2014.**

6 **Q. And why were you assigned a cane?**

7 **A. I was assigned a cane because I**
8 **injured my back slipping.**

9 **Q. How did you injure your back?**

10 **A. Slipping off the chair getting my feed**
11 **up slot.**

12 **Q. All right.**

13 **A. Get my feed up.**

14 **Q. So -- so you've never -- never had a**
15 **cane prior to that feed up slot fall?**

16 **A. No.**

17 **Q. When did you stop using a cane?**

18 **A. Maybe six weeks later so that might be**
19 **January, February?**

20 **Q. All right. What sort of pain**
21 **medication did they give you if any?**

22 **A. I don't take no medication but they**
23 **tried to give me some medication. I just refuse it**
24 **because I don't take medication. I don't.**

25 **Q. You don't take it.**

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Page 85

1 Fox v Lee - 9-6-2017 - Javell Fox

2 **A. No.**

3 Q. And they never told you what was
4 wrong?

5 **A. No.**

6 Q. Did you ever have any injury to your
7 back prior to the date you claim you fell off the chair --
8 ?

9 **A. Yeah.**

10 Q. When did you injure your back prior to
11 that?

12 **A. During an arrest injured like my upper**
13 **back being struck in my back and having knees to my back.**

14 Q. When you were arrested?

15 **A. Yeah.**

16 Q. What year?

17 **A. 2011.**

18 Q. Okay. Did you get treatment for those
19 injuries?

20 **A. No.**

21 Q. Okay. Any other injuries to your back
22 prior to the time you claim you fell in your cell?

23 **A. No.**

24 Q. You ever fall or injure your back at
25 any time after the injury you allegedly sustained in your

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Page 86

1 Fox v Lee - 9-6-2017 - Javell Fox

2 cell?

3 A. No.

4 Q. No other falls?

5 A. No.

6 Q. At no other time ever have you sought
7 medical treatment for your back or back injuries?

8 A. No.

9 Q. Is it your testimony that you only
10 injured your back when you fell?

11 A. Yes.

12 Q. And it's your testimony that you don't
13 have any idea, at least in terms of your understanding,
14 what the medical diagnosis was?

15 A. No.

16 Q. And the cane that they gave you you
17 used it for about six weeks?

18 A. Yes.

19 Q. Any other treatment for that back
20 injury sustained?

21 A. No.

22 Q. What?

23 A. No.

24 MS. LISI-MURRAY: All right. Once
25 again just give me a minute to double check my notes.

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Page 87

1 **Fox v Lee - 9-6-2017 - Javell Fox**

2 (Off the record 1:10 p.m.)

3 (On the record 1:11 p.m.)

4 **BY MS. LISI-MURRAY: (Cont'g.)**

5 Q. Mr. Fox, you indicated that you had
6 meant to take a supporting deposition or a statement from
7 another inmate. I'm assuming you wanted to use this
8 individual as a witness.

9 A. Yeah.

10 Q. You don't recall his name?

11 A. No, I don't. But I know like, you
12 know, around that time he was the only person doing feed
13 up on that -- on that gallery, so he shouldn't be hard to
14 find. I don't know his name though.

15 Q. What other witnesses do you have
16 should this case go to trial?

17 A. Only witness I have I sent you all
18 their names. I -- I don't know their names by heart but I
19 sent you all of the paperwork.

20 Q. So any names of witnesses are provided
21 in written materials that you've sent me? Was that in
22 support of your summary judgement motion?

23 A. Yes.

24 **MS. LISI-MURRAY: That's all I**
25 **have. I'm all set. Thank you.**

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Page 88

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Fox v Lee - 9-6-2017 - Javell Fox

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(Off the record 1:12 p.m.)

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Page 89

1 Fox v Lee - 9-6-2017 - Javell Fox

2

3 STATE OF)
4 COUNTY OF)

5 I, Name of deponent, have read the foregoing
6 record of my testimony taken at the time and place noted
7 in the heading hereof and do hereby acknowledge:
(Please check one)

8 () That it is a true and correct transcript of
9 same.

10 () With the exceptions noted in the attached
11 errata sheet, it is a true and correct transcript of same.

12 X
13 Name of Deponent Caps

14 Sworn to before me this
15 day of Month, 2015.

16 X
17 NOTARY PUBLIC
18 My Commission Expires:
19 _____

20

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Page 90

1 Fox v Lee - 9-6-2017 - Javell Fox

2

3 I, JANET AXTON, do hereby certify that the foregoing
4 testimony of JAVELL FOX was taken by me, in the cause, at
5 the time and place, and in the presence of counsel, as
6 stated in the caption hereto, at Page 1 hereof; that
7 before giving testimony said witness(es) was (were) duly
8 sworn to testify the truth, the whole truth and nothing
9 but the truth; that the foregoing typewritten
10 transcription, consisting of pages number 1 to 88,
11 inclusive, is a true record prepared by me and completed
12 by Associated Reporters Int'l., Inc. from materials

8

provided by me.

9

Janet Axton/MA
JANET AXTON, Reporter

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Page 91

1 Fox v Lee - 9-6-2017 - Javell Fox

2

3 ASSOCIATED REPORTERS INTERNATIONAL, INC.
4 (800) 523-7887

5 Date:
6 Case Name: Fox v Superintendent Lee
7 Index Number: 15-CV-0390
8 Deponent: Javell Fox
9 Deposition Date: 9-6-2017
10 Examining Attorney: Ms. Lisi-Murray

11

Dear Mr. Fox:

12

13 Please read and make any changes and/or corrections in
14 your testimony and sign the transcript in the presence of
15 a notary public. Please do so within thirty (30) days.
16 If you fail to sign the transcript within thirty (30)
17 days, it will be delivered to the appropriate parties
18 without signature. Return the transcript with
19 corrections, if any, to:

20 NYS OFFICE OF THE ATTORNEY GENERAL
21 BY: MARIA LISI-MURRAY
22 The Capitol
23 Albany, New York

24

CORRECTIONS:

25

_____	Word or phrase:	_____
_____	Corrected to:	_____
17 _____	Word or phrase:	_____
18 _____	Corrected to:	_____
19 _____	Word or phrase:	_____
20 _____	Corrected to:	_____
21 _____	Word or phrase:	_____
22 _____	Corrected to:	_____
23 _____	Word or phrase:	_____
_____	Corrected to:	_____

24

Date Signed

25 Associated Reporters Int'l., Inc.

Javell Fox

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A	
<p>a.m 5:2,4 ability 7:8 24:18 80:14 able 29:18 39:20 43:11 70:11,12 72:13,23 73:25 81:2 Absolutely 29:12 abuse 6:13 38:23 54:19 57:4 60:10 abused 60:14 abusing 58:7 access 9:20 15:24 47:22 63:22 69:15,19 70:12,16 72:5,9,21 73:14,23 74:8 81:9 account 22:20 accounting 22:22,23 23:6 achieve 23:5 achieved 23:3 acknowledge 89:5 action 7:24 10:9 70:3,24 71:2 actual 40:15 69:2 add 31:15 addition 13:7 address 6:21 68:15 administration 26:14 administrative 26:25 28:14 81:20 admitted 83:10 affiliate 33:13 affiliation 33:5,7,11,12,21 44:13 affirm 5:8 African 43:22 ago 40:7 agree 7:6 32:11,21 agreed 7:8 26:13,18 ahead 21:23 ain't 49:21 51:21 al 1:6 7:24 Albany 2:8 91:14 allegation 77:13 allegations 25:22,25 26:22 38:14 allege 10:8 alleged 48:9 70:18,19,21 allegedly 59:7 77:14 85:25 allow 73:23 allowed 34:16 37:12,16,17 42:12 49:25 50:8 64:10,12,17 altered 53:3</p>	<p>amended 25:19 30:21 31:2 54:3 amendment 48:9 49:13 69:15 74:12 America 44:6 45:5,10,12 American 42:19 43:18,22 ample 74:8 and/or 91:9 anger 41:16 answer 6:15 8:19 9:3,4,8,10 21:22 22:9 answering 22:11 answers 4:10 Anunnaki 35:6,7,8,8,9,23 36:8 36:12 40:9,21,22,23 41:2,6,11 41:22 42:11,12 43:9,10 44:5,8 45:14 67:17,20 anxiety 60:22 anybody 38:24 79:12 Anybody's 34:5 anyway 33:24 74:2 apartment 68:21 69:2 apologize 10:23 appeal 28:13 30:9 69:20,23 70:24,25 71:3,5,13 81:18 appealed 29:8,9 70:5,14 71:12 81:21 APPEARANCES 2:2 appellate 70:4 71:2,5 appropriate 91:11 approximately 16:12 April 12:22 16:25 61:3,7 72:11 72:12 area 80:3 83:21 areas 55:13 56:20 argue 70:11,12 arrest 20:10,12 85:12 arrested 13:7 85:14 Article 10:7 25:2,13 70:15,21 72:13,15,20,22,25 73:4,6,24 74:5 artifact 40:9 ascertain 42:3 asked 28:21 asking 31:25 assigned 7:22 84:2,3,6,7 assistance 68:14 assistant 7:22 assisting 68:11 Associated 90:7 91:3</p>

assortment 65:19
assuming 87:7
attached 89:7
attack 61:24 62:2,4,7,22,23
 63:5,10
attacks 63:11
attend 44:11
attended 34:23
attending 44:12 69:5,8
Attica 11:24 17:19,25 27:17,18
 36:3 41:4 73:12
attorney 2:7 4:16 7:22 91:7,13
attorneys 4:3
Auburn 13:18,21 14:2,17,24 15:3
 27:11 74:6
August 18:8
authority 7:6
authorize 7:6
Avenue 67:24 68:18
aware 24:17 29:19 41:3 79:13

B

B 31:11,12 61:20,22,23 75:23
B-E-Y 41:21
bachelor's 22:19,21 23:5
back 17:6 19:6 21:9 32:12 33:15
 35:19 36:3 42:18 44:15,16
 53:23 83:15,15 84:8,9 85:7,10
 85:13,13,13,21,24 86:7,7,10
 86:19
bad 82:21
bag 12:11,13,14,15
banged 61:15 74:18,21 75:2,18
bangs 39:14,15
bankruptcy 11:18
Barber 49:4
barbershop 49:16,17,19,21,22
 50:22 51:8
basically 9:19 25:12 26:13
 34:16 35:15 41:8,24 48:17
 52:21 68:8 70:6 73:21 79:23
basis 9:18,19
Bay 47:6 48:6
bear 38:20
beat 74:14
began 60:17
begins 54:17
belief 38:18
believe 15:22 25:6 34:24 44:14
 45:12 62:5 64:24 78:20 79:21

belong 7:5
benefit 69:6
Bey 41:19
big 12:13
bikes 65:18
birth 11:11
boats 65:19
body 62:9,9
book 40:4,8 67:2
books 64:9,9,10,11
bothered 53:21
braided 50:10 52:2
braids 36:22 37:3,15
brain 30:17
brand 73:11
Bread 67:3
breakdown 51:18
brief 43:5 69:23,24 71:10,15,17
 71:18
briefly 47:19
briefs 73:22,22
bring 55:24 78:6
brings 10:20
Buddhist 36:4
bumped 76:3
business 69:2,4
buttocks 58:6

C

C 3:2 68:24
C.O.R.C 26:12 29:16 48:16
Calao 69:16 72:5,9,22 73:15
call 41:8 61:18,19 78:5
called 5:22 40:4,4 53:8 67:2
candles 68:8
cane 58:4 82:13,21 83:2,12,23
 83:24 84:2,3,6,7,15,17 86:16
capacities 31:9
capacity 38:19
Capitol 2:8 91:14
Caps 89:10
caption 90:4
Carolina 41:19
case 7:23 8:2 9:5 32:2 87:16
 91:5
cause 4:17 90:4
caused 61:25 62:4 74:14
ceiling 78:12
cell 6:3 52:17 53:22 64:3 77:14
 77:19 78:21,21 79:3,5,10 80:9

80:10,20,22 81:2,10,15 82:4,8	coming 43:14 49:15,16 58:3
82:11,12,13,18,19,23 85:22	74:22 75:23 76:19,20
86:2	Commission 89:13
cells 82:9,15	common 54:13 55:11 57:6
certain 29:24 30:5,10,21 31:2	company 61:17 77:19 82:16
38:19 39:22 41:13 68:9,9	complain 79:12
72:13	complaining 52:21
certainly 52:24	complaint 10:9 25:20,21,22,25
certifications 23:3	26:23 27:3 30:21 31:2 43:17
certified 4:17	48:4 49:4 70:6,10,20 73:20
certify 90:3	83:4
chair 78:10,12 83:9 84:10 85:7	complaints 25:18
chakras 68:10	complete 22:23
chance 40:7	completed 22:18 90:7
change 33:21 44:12	completely 39:10
changed 33:22 44:15,15	Comstock 1:12
changes 91:9	concerning 47:17
changing 26:16	concerns 6:22
charged 12:16	conditions 79:3
charges 13:6	conference 28:5,6
Charlotte 41:18	confined 26:19 34:25 60:16
check 86:25 89:6	77:14
checking 83:12	confirm 80:15
choice 42:17	confiscated 47:23 66:20
chose 33:13	confused 43:19
Christian 67:2	Connor 54:7
chronologically 19:6 48:20	consciousness 43:14
circumstances 8:12 10:8	consisting 90:6
City 22:14 23:16 70:3	constant 60:10
civil 4:5 7:24 8:15 70:3	constantly 5:24
civilian 41:9	Cont'g 77:12 87:4
claim 48:9 63:21 72:8 74:11,12	contact 6:11
74:13 79:2 85:7,22	contained 25:22,25
claiming 66:23 77:22	continue 21:22
claims 30:21 31:2,6,6,10 54:6,7	contraband 46:24
69:15,19	control 7:4
clarification 10:17	controlled 12:6 13:4 18:10,16
classes 67:15 69:6	19:11,16 20:14
clean 82:13	conversations 51:11,11
clear 11:2 37:23 43:24 44:2	convict 28:7
coat 79:9	convicted 12:3,5
cocaine 19:14 20:19	conviction 12:21 13:9 18:19
Coerced 51:5	20:12,21 69:20
cold 79:3,5,12,22,25 80:3 81:7	copies 28:25,25 70:12,13 72:6
81:8	72:24 73:15,15,18,21 74:2
coldness 81:15 82:4	83:18
colors 68:8	copy 4:17
come 45:15,17 78:12 82:13	CORC 28:13,19 29:3,10,10,21
comfortable 36:12	55:25 56:2 81:18,21,22

<p> core 44:2 cornrow 36:22 37:2,15 correct 15:9,12 30:21 31:3,4 34:10,11 36:7 46:2,3 57:6,7 71:16 76:8 89:6,8 Corrected 91:16,18,19,20,21,22 91:23 correction 38:25 Correctional 11:21,24 13:18,22 16:21 17:19 26:8 27:6 33:17 75:20 77:21 corrections 4:12 7:25 91:9,12 91:15 correctly 73:14 83:3 counsel 1:13 90:4 Counselor 15:22 48:2 county 12:23,24 18:18,20 20:10 20:11,22,23 89:3 couple 33:18 court 1:2 5:3,7,12,15,17 12:19 21:24 30:25 31:7 69:19 70:5 70:12,16 72:9,21 73:19,24 77:6,9 court's 30:20 69:15 courtesy 7:7 courts 73:15 cover 26:15 40:8 covering 29:5 coworkers 29:6 crack 19:14 crazy 62:5 creates 32:22 criminal 12:5 13:3,7 18:10,15 19:11,15 20:14,21 69:20 cross 31:19 crown 49:23,24 Cruz 48:8 52:8,23 54:7,10,15 55:7,10 57:18 58:12 59:7 60:2 60:7 61:11,14,17,20 74:11,13 75:12,15,15,17 76:7 cultural 43:17 current 43:7 45:24 46:6 68:3,4 currently 18:4 25:3 cut 17:11 51:8 53:5,5,7,19 </p>	<p> 55:16 59:20,25 60:23 63:5 64:21 69:24 71:18 72:8 74:25 85:7 91:4,6,24 dates 13:25 14:7 15:3,6 16:23 19:22 20:5 21:8 23:9 48:20 49:12 55:10 57:17 72:10 day 6:4 34:20,21 53:22 64:19 67:13 89:11 days 13:16 14:14,15 15:13 16:11 16:16,25 17:2 29:16,17 66:21 66:21 80:4 82:22,25 83:11 91:10,11 deadline 71:20 dealing 68:10 Dear 91:8 December 14:9 15:14 16:13,14,14 52:10,10,11,13 84:3 decided 34:13 decision 30:20 48:16 73:18 decisions 30:25 declaration 52:20 78:24 defend 7:22 defendant 8:7,13 49:12 defendants 1:7,13 2:6 4:6 9:13 9:16 31:9 Defendants' 48:6 70:4,14 defense 7:25 definitely 48:3 degree 12:7,8 13:4 18:16 19:16 19:17 20:15 22:19,21 23:6 degrees 79:8,8 80:9,11,13,15 delivered 91:11 denial 9:20 denied 63:22 72:9 73:14 Dep 72:21 department 69:21 71:7 deponent 1:10 89:4,10 90:3 91:6 deposition 4:5,12,15,16,18 6:17 6:20,24 8:3,4,10 10:21 17:21 27:25 32:2,3 87:6 91:6 depressed 61:23 depressing 60:17 depression 60:22 61:25 described 20:24 61:11 designate 34:13 designated 35:4 54:15 57:8 designation 33:5 34:9 despite 35:3 determined 41:10 </p>
---	--

D

D 3:2,2
Daily 67:2
damages 31:8
date 1:11 11:10 18:2 25:5 55:15

determines 7:5
diagnosis 86:14
Diane 71:21
diary 24:23
dictation 42:7,9 43:15
difference 42:4
different 39:11 46:14
Direct 3:3 7:19
directive 30:7 37:19 56:4 81:23
directives 37:13
dirty 81:15 82:4
dirty 79:3
disbursement 72:4
disciplinary 17:12 46:5 72:14
 72:18
discriminating 7:17
discrimination 6:10 7:12,18
discuss 24:24
dismiss 9:5 10:2 22:2
dismissal 30:20
dismissed 9:22,23,25 31:10
 51:24 70:2
dismissing 31:2
district 1:2,2 8:20,22
division 70:4 71:2,5
DOCCS 7:4,8 33:21 34:14,16
 35:23 36:13 37:10,13,19 44:13
 44:22 45:20 46:25
Docket 25:20 31:6,13
document 47:20
documentation 15:23 63:2
documents 24:20
doing 68:6 79:6 87:12
door 77:15,23,25
double 86:25
downstairs 75:23 78:7,9
dread 50:5
dreads 32:8,10,15,18 34:5
drink 63:13,19
drinking 63:19
drinks 63:20
driver's 11:16
drug 20:17
due 23:25 72:17 79:23 81:24
dug 40:9
duly 4:15 90:5

E

E 3:2,2,2 31:11
eagle 38:21

earth 35:9
ease 6:16
easier 11:7
easily 6:23
Eastern 13:22 14:5,16,21 15:6
 26:8 27:6 33:17 40:11 41:7
 66:15 73:7 74:4 75:20,22 76:8
 76:11 77:21
eat 78:13
education 22:17
effectively 34:3,4
eight 20:7 26:17 32:17,18 37:6
 66:21 73:5 82:25
eighteen 77:19 79:8
Eighth 74:11
eights 25:3 73:2
eighty 10:5
either 8:25 9:3 72:24
elastic 53:5,5,6,7
eleven 5:4 35:23 36:9 41:22
 70:20
Elmira 13:14
else's 29:11
emotion 62:3
employment 23:8,14,19
Encouraged 51:6
ended 83:20
ends 74:20
energies 68:9
enlightenment 38:22 65:18 69:13
enter 13:11,13
entirely 9:5
entitled 21:23
equivalency 23:6
equivalent 22:19,22 39:24
errata 89:8
escort 57:10,10
Especially 73:7
et 1:6 7:24
event 33:18,19,22 34:14,14,15
 34:18,21,22,25 44:11
everybody 79:14,15
everyday 78:13
exact 46:18,18 59:25
Examination 3:3 7:19
Examining 91:7
example 43:24 44:2
exceptions 89:7
excessive 74:10,12

excuse 48:14 68:17 74:19,20
exercise 63:14
exhaust 26:25 28:13 56:8
exhausted 81:24,24
Expires 89:13
explain 38:12
express 39:13 42:7
expression 38:16 39:6,12,15,19
 48:9 49:13 50:3
extent 6:22

F

F 3:2
facilities 27:5,7,10
facility 6:12 11:21,24 13:13,18
 13:22 14:6 15:23 16:6,21
 17:19 18:4 26:7,8 27:6,15,16
 30:7,8,10,13 33:18 37:10
 45:20 46:25 47:25 50:19 62:15
 62:16,17,18,21 66:14 75:21
 77:20,21 81:20,24 82:3
facing 6:10
fact 17:20 34:9 35:4 43:13 50:3
 56:18 70:14 72:3 82:10
Factory 23:21
facts 10:8 54:3
factually 15:11
fail 91:11
failed 29:4
fall 83:20 84:15 85:24
falls 86:4
false 47:20
familiar 28:9 33:4 43:25
family 22:15
far 21:9 33:21 37:15,16 38:18
 38:20 39:22 41:13 42:9,18
 56:21 59:2 72:12,14 81:19,20
fashion 32:8
fast 55:3
fault 29:11
favor 70:5
feathers 42:22 44:7
February 16:14,15,19,25 57:17
 57:18,20,22 59:8,18,23,24
 74:20,21,22,23 76:16,17 84:19
federal 4:4 24:4
feed 82:14,16,17,23 83:7,8
 84:10,13,15 87:12
feel 15:9 36:12 39:19 42:5,6
 53:6

feet 58:5 59:9
fell 83:3,18,21,22,24 85:7,22
 86:10
felt 53:6
fifteen 31:11,12 41:23 64:11,13
 65:8,11
fight 22:5 39:2
fighting 22:6
figured 7:2
file 25:21,24 26:11,12 27:4
 28:18 29:5,18 30:6 55:22 70:8
 70:9 71:9 72:15,16,19 73:20
filed 8:16,18,23 10:4,6 11:18
 24:4 26:4,24 27:8,24 28:7,17
 28:20,21,23 29:3,3,7,15 30:25
 56:4 70:6 71:4 72:25 73:4,6
 73:10,12 74:5,6 79:17 81:16
filing 26:22 28:9
fill 72:13
filthy 79:11
final 25:11
find 87:14
fine 10:24
first 26:3 28:21 33:2 36:17
 48:9 49:12,17,20 59:20 69:15
 83:25
five 16:21,22,24 17:3 27:13
 37:7,7 46:11
flats 82:20
floor 53:12 76:12,13,14,15,18
 78:8
focused 55:10
follow 44:4
followed 30:19 55:2
food 77:15,23 78:2,4,13,17
 82:11,14
fool 80:16
force 74:10,12
forced 50:19,20 51:4
foregoing 89:4 90:3,6
forged 15:23
forgeries 47:22
forget 18:17 49:5 53:15,25 54:3
 62:24 78:20
forgets 11:8
forgot 8:25
form 4:9 34:2,5 35:17
forth 10:9 25:19
forty 5:4 13:16 14:14,14,15
 15:13 26:25 27:5

Forty-forty 30:7 56:4 81:23
four 37:18 38:3,4 46:10,11
fourteen 64:9,10
fourth 18:17 19:17,20 69:20
 71:7
Fox 1:1,1,4,10 2:1,1 3:1,1,3
 4:1,1 5:1,1,6,10,11,14 6:1,1
 7:1,1,23,24 8:1,1 9:1,1 10:1
 10:1 11:1,1,11 12:1,1 13:1,1
 14:1,1 15:1,1 16:1,1 17:1,1
 18:1,1 19:1,1 20:1,1 21:1,1
 22:1,1,5,10 23:1,1 24:1,1
 25:1,1 26:1,1 27:1,1 28:1,1
 29:1,1 30:1,1 31:1,1 32:1,1
 33:1,1 34:1,1 35:1,1 36:1,1
 37:1,1 38:1,1 39:1,1 40:1,1
 41:1,1 42:1,1 43:1,1 44:1,1
 45:1,1 46:1,1 47:1,1 48:1,1
 49:1,1 50:1,1 51:1,1 52:1,1
 53:1,1 54:1,1 55:1,1 56:1,1
 57:1,1 58:1,1 59:1,1 60:1,1
 61:1,1 62:1,1 63:1,1 64:1,1
 65:1,1 66:1,1 67:1,1 68:1,1
 69:1,1 70:1,1 71:1,1 72:1,1
 73:1,1 74:1,1 75:1,1 76:1,1
 77:1,1,13 78:1,1 79:1,1 80:1
 80:1,21 81:1,1 82:1,1 83:1,1
 84:1,1 85:1,1 86:1,1 87:1,1,5
 88:1,1 89:1,1 90:1,1 91:1,1,5
 91:6,8,25
free 15:9
freedom 38:15 39:6,12,13,19
 42:17 48:9 49:13 50:3
freeze 80:20,22,25 81:4
freezing 79:10 80:9
friend 40:6 52:18 65:23,25
friends 44:11
frisk 75:9 76:23
frisked 52:16 54:22 61:15
frisking 74:16
front 40:8 51:22
full 5:13
fully 26:18
further 4:8,11,14 30:9 71:15,17

G

G 3:2
gallery 80:11 81:5 87:13
Garvin 76:13
general 2:7 7:22 91:13

Geographic's 65:21
getting 40:12 49:18,20 67:2
 83:7 84:10
give 5:8 8:4 9:8,10 10:12 16:6
 43:5,24,25 46:18 52:23 57:17
 66:13 72:10 82:11 84:21,23
 86:25
given 73:19
giving 51:18 90:5
glad 34:7
gloves 79:9
go 6:6,7 13:17,21 14:5 15:17
 17:4,18 20:6 21:23 29:22 30:9
 33:18,19,22 34:14,19 35:25
 49:20 51:22 52:23 54:17 56:2
 57:11 58:13,16,25 59:9 61:22
 62:11 67:14 74:22 76:4,19
 87:16
goes 72:4
going 7:18 8:3 19:6 21:15,17,18
 21:23,25 29:25 30:6 35:15
 36:4 38:20,21 46:17 51:22
 52:10,14,23 54:4,12 55:2,2,2
 55:11 57:5,17 58:2,3 61:22
 75:12 83:21
good 68:8
grab 78:9,9,10
gram 47:6,8
Great 11:21 14:6,7,12 15:12,16
 27:20,21,22,24
grievance 26:3,10,15 29:3,9
 30:4 52:5 55:22 56:3,4 58:18
 79:17 81:16 82:9,10
grievances 25:21,24 26:21,25
 27:5,8 28:7,10,24 29:20,25
 30:5,6 72:16
group 67:17,20 68:2,6
guard 76:12,14,15,18
guardroom 53:12
guess 25:19
guest 33:20,20
guided 41:22,24
guider 41:12,17,18
guilty 12:3
guys 33:18 75:12

H

H 45:7
hair 17:11 32:13 34:2,4,5 36:24
 37:5 39:14 44:8,9 49:24 50:10

50:22 51:8,25 52:2,17,17
 53:14,18,19 54:13 60:10,17
 72:15 73:8,25
haircut 40:10 49:20 52:7
hairstyle 16:3 26:20 31:6 32:6
 33:2,10 36:17,20 37:12,14,16
 38:8,13,19 39:18 42:3,5,18
 43:8,9,12,15 46:14,16,19,19
 48:18,19 49:25 50:2,4,7 60:15
hairstyles 26:16,17 42:13
Hall 77:18
hand 5:5 38:24
handled 30:6 81:19
hands 40:8 53:8 78:16
hang 78:8
happened 61:21 76:17 83:6
harass 37:20 54:18 57:3
harassed 75:5
harassing 5:24 52:6
harassment 56:3,5 57:19 74:12
hard 58:5 87:13
Harlem 67:23
Harris 9:15
hat 79:9
hazard 34:4
head 32:23 49:18 61:15,19 74:18
 74:21 75:3,18 76:3
heading 89:5
health 58:2,3,3 59:11,12,13,16
 59:17,21,24 60:3,6,9,14,19,24
 61:7
heard 52:19,20
hearing 4:17 25:10,11,12 47:15
 47:19 54:12,14,18 55:11 57:5
 57:11 58:24 61:17 77:3
hearings 46:7
heart 61:24,25 62:4,6,22,23
 63:4,9,11 87:18
heat 80:6,7
heaven 35:8
held 23:9,18 33:13 34:14,15
 35:24 69:25
hereof 89:5 90:5
hereto 90:4
heritage 43:18
heroin 12:12,13,17 18:14 19:13
high 41:7,11
highest 22:17
history 43:5 46:5

hold 35:9 38:23 39:23 54:4
 77:10
holding 71:21
home 23:11
hospital 62:11,13,14
hour 82:11
hours 6:3
housed 28:7
houses 65:19
housing 15:18,19 16:7,10 17:5,7
 17:15,18
huh 21:16 53:19 71:23
hulk 38:20
hundred 70:20
hurt 83:3
hurting 82:20

I

I.G.R.C 26:14 29:4 48:16
I'm 15:5 21:23 30:2 36:7 42:3
 43:11 61:22 80:16
ice 83:19
idea 15:11 86:13
identified 35:22 36:8 44:21
identify 35:19,20,21 39:23
 45:19
impede 24:18
important 43:11
impossible 81:3
inappropriately 74:15
incarcerated 18:24 23:12
incarceration 12:3 13:8 19:7
 20:20 46:6 68:4
inches 32:11,17,19 37:6,7
incidences 76:7
incident 51:17 55:15,16,21
 58:12 59:7,10 60:2,6,7 61:11
 76:10
including 10:5,7 63:23
inclusive 90:7
index 25:7 91:5
indicated 87:5
individual 7:25 31:9 87:8
individuality 39:13
individuals 39:22
infirmary 83:11
initiated 41:21
injure 84:9 85:10,24
injured 84:8 85:12 86:10
injuries 83:16 85:19,21 86:7

injury 74:14 85:6,25 86:20
inmate 66:3,5 78:14 87:7
inside 6:4 51:15 54:13
insofar 31:8
instances 29:20
instructing 68:7,7
instructions 29:21 73:20
Int'l 90:7
intent 12:16
INTERNATIONAL 91:3
interpret 37:20
interpreted 37:19
intimately 28:8
investigated 79:20
investigation 56:6,10 79:22
investigator 58:21
involving 76:7
Islam 33:16 34:9,13 35:4,5,10
 35:20,25 44:11,19,22 45:25
Island 34:15
issue 12:19 72:18,23 73:10,25
issues 30:10 37:13 61:7 72:14
 73:8

J

jail 21:3,3,4
janitor 23:12,19
January 59:24 84:19
Javell 1:1,4,10 2:1 3:1,3 4:1
 5:1,11,14 6:1 7:1,23 8:1 9:1
 10:1 11:1 12:1 13:1 14:1 15:1
 16:1 17:1 18:1 19:1 20:1 21:1
 22:1 23:1 24:1 25:1 26:1 27:1
 28:1 29:1 30:1 31:1 32:1 33:1
 34:1 35:1 36:1 37:1 38:1 39:1
 40:1 41:1 42:1 43:1 44:1 45:1
 46:1 47:1 48:1 49:1 50:1 51:1
 52:1 53:1 54:1 55:1 56:1 57:1
 58:1 59:1 60:1 61:1 62:1 63:1
 64:1 65:1 66:1 67:1 68:1 69:1
 70:1 71:1 72:1 73:1 74:1 75:1
 76:1 77:1 78:1 79:1 80:1 81:1
 82:1 83:1 84:1 85:1 86:1 87:1
 88:1 89:1 90:1 91:1,6,25
Jennings 69:16 71:21 72:9
jerk 83:8
judge 6:11 70:9,10,13 73:19
judge's 47:20
judgement 10:2,3 31:16,18,19
 54:2 87:22

jumping 54:24
June 13:12 14:3,16,17,24 15:4
 18:2,8 23:11 48:15
jurisdiction 70:8

K

keep 19:6 26:19 34:24 43:3
 47:21,21 51:21 55:9 74:22
 75:10,11,11,15
kept 41:23 71:21 83:11,12
kicked 59:8
kicking 58:5
kids 21:12,19 22:2,3,4,10
kind 6:13 25:5 26:14
king's 49:23
knees 85:13
knew 51:25 79:22
knot 61:18
know 5:23 6:3 7:2 8:18 10:2,17
 15:9,24 25:12 26:15,25 27:2
 28:25 29:23,23 30:12,16 35:12
 35:14,15,16,17,24 36:5 39:17
 40:20 41:14,24,25 42:10,15,16
 42:17,20,23 43:10,15 45:14
 46:23 48:16 50:22 52:21 55:4
 55:4,5 69:12 72:5,5 80:17,17
 80:17,19 83:14 87:11,12,14,18
knows 54:15
Krantz 49:5

L

lab 12:15
Lablatte 69:16,25 71:21 72:10
LastPageOfTranscript 90:7
late 33:22 70:2
law 9:20 72:6 74:8
lawsuit 7:12,18 8:7,15 9:18,19
 9:21 24:24 30:18,23 49:9
 50:18
lawsuits 10:4,6
lead 55:8
leaders 40:3
leaning 58:6
leave 62:18,20
leaving 52:4
led 13:8
Lee 1:1,6 2:1 3:1 4:1 5:1 6:1
 7:1,23 8:1 9:1 10:1 11:1 12:1
 13:1 14:1 15:1 16:1 17:1 18:1
 19:1 20:1 21:1 22:1 23:1 24:1

25:1 26:1 27:1 28:1 29:1 30:1	logical 50:5 54:12
31:1 32:1 33:1 34:1 35:1 36:1	long 12:25 13:15,19,23 16:9,22
37:1 38:1 39:1 40:1 41:1 42:1	17:14,24 19:21 32:11,14,15,19
43:1 44:1 45:1 46:1 47:1 48:1	32:22 34:2 37:2,17 38:19
48:7 49:1 50:1 51:1 52:1 53:1	66:12,19 79:25
54:1 55:1 56:1 57:1 58:1 59:1	look 38:8 76:25
60:1 61:1 62:1 63:1,22 64:1	looking 83:17
65:1 66:1 67:1 68:1 69:1 70:1	looks 32:7
71:1 72:1 73:1 74:1 75:1 76:1	lose 43:6
77:1 78:1 79:1 80:1 81:1 82:1	loss 29:18
83:1 84:1 85:1 86:1 87:1 88:1	lot 16:6 40:2 44:7
89:1 90:1 91:1,5	lots 64:18
legs 58:4	lump 83:15
length 37:5	lunch 54:23
Lenox 68:17,18	lunchroom 52:9
let's 19:5,5 32:5 74:10	
letter 72:5	
letting 51:7	
level 22:17 30:7,8,10,13 41:13	
81:20,25	
library 9:20 72:6 74:9	
license 11:16	
lie 26:16 52:2	
lied 26:14 50:9	
lieutenant 50:21 51:3,18,20,24	
52:3,4,19,20,23 53:9,12,17	
58:21 61:14,16,18,20	
life 35:22 63:17	
lifted 75:17	
light 43:12 68:8	
likes 57:14	
limit 64:19	
lion 38:21	
Lisi-Murray 2:7 3:3 5:16,18,20	
5:21,25 6:5,8,14,19 7:3,13,16	
7:20,21 77:12 86:24 87:4,24	
91:7,13	
listen 49:25 75:9	
literally 79:8	
little 37:5 67:4	
live 22:13,14	
local 21:3,4	
locate 64:3	
located 64:4,5 76:7,11	
location 1:12 17:22	
lock 26:19 34:25 44:9 47:21	
51:21 74:22 75:10,11	
locked 6:3 47:21 60:12	
locks 40:15,15	
	M
	Maddison 48:6 49:12 50:21 51:3
	51:12,18,20 52:3,4,19,21
	53:10,13,17 54:5
	Madison 67:24
	magazine 67:4
	magazines 40:11 63:24 64:3,5,5
	64:7,11,12 65:3,4,5,6,9,11,14
	65:16,18,22 66:6,22
	mail 71:21 72:24
	mailed 69:25
	mailing 72:4
	maintain 11:15 24:23 43:8
	maintained 38:8,9
	male 62:23
	man 40:3 53:25 78:20
	Manhattan 67:23 68:19
	March 16:13 53:11,12 55:16
	58:11,24 61:3,7,13,23 63:6
	74:17,19 77:3
	Maria 2:7 7:21 91:13
	marijuana 46:24 47:5 48:19,23
	married 21:10
	master 41:13
	mastered 41:15,15
	material 67:3
	materials 63:23,23 64:22 66:23
	87:21 90:8
	matter 1:3 7:23 33:23 42:6
	Meadow 11:21 14:8,12 15:12,16
	27:20,21,22,25
	Meadows 14:6
	mean 25:11 28:24 35:14 42:16
	48:13 78:21

means 35:8
meant 78:23 87:6
mechanism 56:3
mediation 68:10
medical 58:14,16 59:2,4,9,9
 62:13,15,16,19 76:4 83:10,11
 83:18 86:7,14
medication 60:20,21 61:2 84:21
 84:22,23,24
medications 24:14 60:19
meditation 66:25 67:18
mediums 53:5
member 35:23 41:6
members 35:7
memory 51:23
mental 58:2,3,3 59:11,12,13,16
 59:17,21,23 60:3,6,9,14,19,24
 61:7
mention 61:21
Mexico 44:6
Miller 48:8
mine 40:6 65:23
minute 76:25 86:25
misbehavior 47:25 50:9,11,25
 51:24 52:5,24 53:2,14,17
missed 71:20
misstate 15:8
mistake 47:7
Mohammed 35:14
Mohawk 32:8 40:10 42:18,22
 43:13,15,17
Mohawks 40:16
monetary 31:8
money 12:15 71:22,24
month 13:24 40:7 89:11
months 20:8 53:20
Moorish 35:25 45:2,2,5,7,7,9,20
Morocco 45:15,17
Morris 45:6
Morrow 29:24 30:4
mother 22:3
motion 9:5,25 21:24,25 31:16,18
 87:22
move 7:6 54:6 61:16,19
moved 6:23 17:21 31:19 78:24
 82:5,12,12,18,19

N

N 3:2,2
N.O.I 33:22 34:22

N.Y.C.R.R 37:18,23,25
name 5:13 7:21 30:3 41:19 47:20
 48:3 49:6,6,7 53:16,25 54:3
 62:24 66:10,11 78:19,23 87:10
 87:14 89:4,10 91:5
NameOfReporter 90:3,9
names 87:18,18,20
narrow 63:9
Nation 33:15 34:9,13,15 35:4,20
 35:25 44:10,18,22 45:25
National 65:21
Native 42:19 43:18,22,22
natives 44:4
need 30:9,9 42:6 61:16 72:5,6
never 15:23 38:24 47:21 48:12
 53:21 63:17 73:4,6 77:2 78:22
 81:22 83:24 84:14,14 85:3
new 1:2,12 2:8 8:20 11:15 18:23
 20:11 22:14 23:16 28:10 39:3
 73:11 91:14
newspapers 64:5,7,11,14,19,20
 65:9
night 63:7
nine 80:3
Nineteen 10:5 31:11,12
Nishi 41:9
nobody's 43:24
nod 11:3
North 41:18
northern 1:2 8:20,22
notarized 12:18
notary 4:13 89:12 91:10
note 21:21
noted 89:5,7
notes 24:24 76:25 86:25
November 25:6 26:5,5 48:14
 49:17 52:14,14 72:11,11,12
number 7:24 25:7,20 31:7 68:21
 68:23 90:6 91:5
nurse 62:24
NYS 2:7 91:13

O

O 3:2,2
oath 10:12
object 9:2,7,9
objection 21:21 22:8
objections 4:8
obtained 20:21
occasion 18:13

occasional 63:20
occur 48:11
occurred 48:13
occurrence 78:13
October 11:12 14:9,21 15:7,13
 23:12
offer 36:14
offered 60:21
OFFICE 2:7 91:13
officer 49:5,6,18,19 50:8,14
 52:6,8,8,9,23 53:15,15,16,20
 53:21,21,22,24 54:10,14,15,22
 57:7,18 61:14,17,20 75:9,16
officers 5:23 8:2 17:10 37:20
 57:10 78:7 79:9,16
officers' 49:6
official 31:9 38:25
offshoot 35:12 36:5,12 45:14
offshoots 36:3 43:23
offspring 33:24 35:8
oh 10:23 14:15 20:22 27:18
 31:21 40:13 53:13,18,25 58:21
 62:12,16 65:10 75:23 78:20
 80:3
okay 5:3,25 6:5,8 7:15 8:6,9,15
 8:24 9:10,13,25 10:11,20
 11:10 12:20,23 14:5 15:2,5,10
 15:16,25 16:9,19,22 17:17,24
 18:3,7,15,18,21 19:10,15,19
 20:2,9 21:10,21 22:12 23:13
 23:25 24:4 26:3,21 27:7,12,14
 27:22,24 28:8,12 29:13 30:11
 30:18 31:5,17 32:10,18,25
 33:9 34:7,12,18 36:6,16,20
 37:9,22 38:4,12,17 39:4 40:13
 40:17 41:5 42:2,2 43:4 44:3
 44:18,25 45:16,22,24 46:4,23
 47:9,12 48:5,11 49:11,15
 50:17 51:2 52:12,25 53:19
 54:21 55:20,24 56:7,15,23
 57:5,9,15,23,25 58:9,19,22,25
 59:6,20 60:11,18,23 62:6,25
 63:8,21 65:20 66:22 67:5,12
 71:4,19 72:2,8,25 73:9 74:7
 75:7 76:3,24 77:8,17 78:16
 79:2,17,20 80:5,12 81:6,12,14
 82:2,7 83:2,17,25 85:18,21
old 40:2
once 38:19,24 41:12 56:3,4
 82:17 86:24

Oneida 12:24 18:20 20:22,23
open 77:25 82:11
operative 25:21
opportunity 23:14 30:24
order 28:13 33:19 34:13 37:20
 39:22 41:8,15,22 44:11 73:18
ordered 31:7
orders 30:20,25
original 4:14,18 43:17
outcome 26:9 56:9
outside 54:23 76:22
overhear 51:11
owe 71:24
owed 71:22

P

P 3:2
p.m 77:5,11 87:2,3 88:2
page 31:13 70:20 90:4
pages 90:6
pain 84:20
pair 53:3
pants 53:3,3,4,7,8 75:17
paper 47:23
papers 31:18,22 43:16 47:18
paperwork 47:24 51:22 52:15
 70:13 87:19
parameters 36:13
parole 21:7 25:10,16
part 7:25 26:13 39:18 49:5,8
 50:18 66:24,25
parties 4:4 91:11
pass 77:15,23,25
passed 42:18
pattern 44:5
pay 69:9
peace 35:10,11,11
pending 25:3,5,6
people 39:15 60:14 69:5,8
percent 44:5
perfected 71:13
period 47:24 77:14
person 39:13 87:12
personal 69:2,3,4,6
personally 50:23,24
pertaining 49:3 72:16 73:7,25
phone 6:7
phonetic 29:24 47:7 48:6,7 49:4
 69:16,17
phrase 91:16,17,18,19,20,21,22

physical 74:14
pick 33:6
Pickle 23:21
pictures 26:17
pipes 80:24,25 81:3,4,4
place 22:8 54:25 89:5 90:4
plaintiff 1:5 2:4 8:6,13,14 31:8
Planet 40:5
planted 47:2 48:19,22
please 5:5,12 10:17 89:6 91:9 91:10
pled 12:3
pockets 32:22 34:2,5
point 11:8 37:18 38:3,4 43:3 44:12 47:5 54:5 60:18 64:2 83:19
pointed 40:6
Points 16:21,23,24 17:3 27:13
porter 78:5,14 82:13
porter's 78:19
pose 37:17
position 23:19
positions 23:18 68:9
possess 18:12
possession 12:5,11 13:3,7,9 18:10,16 19:11,16 20:14,18 46:24
postage 71:22,24
practice 35:16 54:14 55:11 57:6 57:14
practices 40:21
practitioner 35:5,20 41:3
pre 42:4
preliminary 25:10,11
prepare 24:21
prepared 90:7
presence 90:4 91:10
present 10:9 12:2 13:8 32:6 33:2,10 36:17 38:9 39:20
pretty 25:7 30:12,16 32:13 36:15 80:18
priest 39:25 40:9,10,15 41:7,11 41:14 42:10 43:9,10
priesthood 42:8
priests 42:12,16,17,19
prior 17:22 19:7 20:2 28:2,4 36:21 44:18 59:18 67:10,16 74:4 83:19 84:15 85:7,10,22

prison 6:4 12:25 13:11 18:4,22 18:23 19:7,21 20:3,5,24,25 22:13,24 23:3,11,23 24:2 28:10 33:6,14 39:2 40:24 41:3 45:25 65:25 67:8,10,16
prisoner 38:24 52:3
prisoners 6:10 37:21 40:25 75:11
prisons 39:2
private 55:13 56:5,20 58:5 75:15
privates 54:11,20 58:12 59:8
privy 51:13
Pro 2:5
probably 21:7 28:23 29:2 32:12 37:5,8 59:22,23 64:18 66:18 69:7 80:2,19 82:8,24,25
problem 51:8 56:19,20
problems 17:12
Procedure 4:5
proceedings 10:7,8
process 6:20 28:9 72:17
proper 72:21,22
properly 70:6
provided 87:20 90:8
provision 29:18
provoking 58:7
public 4:13 89:12 91:10
pull 78:11
pulled 32:13
pulses 62:10
punish 48:17
punishing 48:18
purpose 7:9
pursuant 4:6 31:10
pushing 58:4
put 6:13 7:9 9:7 16:2 25:13 42:20 47:5,8 48:21 53:8 60:19 62:8 69:23 78:11 80:6
putting 52:21

Q

Q-U-A-D-I-R 41:21
Quadir 41:19
queen 49:23
question 6:15 9:9 58:25
questions 4:9 6:21 8:3 9:3,3,4 9:6 10:15,25 21:23 22:8,9 31:25 54:25
quick 5:19

R	
<p>R 3:2 raise 5:4 raised 38:24 ran 67:19 rare 38:25 Rastafarian 33:14 36:2 44:15,16 44:19,23 46:2 reached 29:10 42:8 read 4:11 62:10,10 89:4 91:9 reading 63:22,23 64:22 real 5:19 82:21 really 33:23 61:2 83:15 reason 48:17 50:4,5 52:16 54:12 75:13 recall 13:25 26:22 30:12 31:24 38:7 46:12 83:17 87:10 receive 31:22 received 25:16 31:18 record 5:2,4,13 9:8 11:2 21:22 22:8 77:5,7,11 87:2,3 88:2 89:5 90:7 records 63:3 83:18 recreation 6:7 74:22 75:10,11 76:19 recreational 83:21 rediscovering 40:2 refer 40:18 reference 63:24 refrain 31:25 refuse 21:22 84:23 refused 26:11 28:18 refusing 17:11 registered 44:10 registering 36:12 regular 41:9 related 19:13 46:13,16,19,24 relation 44:2 relative 24:24 26:22 released 23:25 relevance 8:24 9:2 relief 27:2 relieve 7:11 religion 33:12,13,23,24 35:6,11 35:16,24 36:3,5,11,13 38:13 39:5,24 40:2,21 42:19 43:23 43:25 44:22 60:21 66:25,25 religions 35:7,25 religious 33:5,6,10 34:9,16,19</p>	<p>35:7 36:4 38:18 39:21 42:7,9 44:12 50:2 63:23 66:23 67:3 68:6 69:12 remedied 82:3 remedies 27:2 28:14 56:8 remedy 30:8 72:20 81:23 remember 8:25 9:14 20:16 21:8 44:15 55:18 59:24 66:11 74:25 78:23 83:3 renovations 79:6,23 replied 31:23 reply 38:5 54:2 report 47:25 50:9,11,25 51:15 51:24 52:5,24 53:2,14,17 58:13,17,18 Reporter 5:3,7,12,15,17 77:6,9 90:9 Reporters 90:7 91:3 represent 35:10 38:20 42:23 representation 43:13,18 represented 44:8 represents 38:21 require 10:17,21,24 required 10:13 22:9 38:13 research 72:22 73:24 researched 73:11 reserved 4:10 resided 17:22 resolved 30:10,13 respect 6:17 10:15 12:2 20:20 25:15,16,18,21,25 28:9,16 30:18,20,23 31:5,17 32:2,5,6 32:25 34:8 42:2,4 43:7 45:24 46:4 47:14 48:5 49:11 55:10 57:15 58:11 59:6 61:11 62:6 63:21 69:14 76:6 81:14,15 82:3 respective 4:4 respond 29:17,17 response 10:25 11:2 responsiveness 4:9 restriction 74:18 retaliate 54:18 57:3 retaliating 52:7 retaliation 47:4 return 24:5 25:5 91:12 returned 4:16 review 24:20 30:25 right 5:5,18 7:3,15 10:18 11:5 11:9,21 12:19 14:15,19,22,23</p>

15:12 16:12,13 19:5 25:8
 28:22 32:4 35:18 36:16 40:13
 41:24 43:16,21 45:19 46:13,21
 48:5,22 49:8,11 50:20 51:16
 54:4 56:17 57:15 58:11 59:15
 59:22 60:13 61:10,10 64:21
 65:13 67:19 68:15 69:14,14
 71:7 73:12,13 74:14,23 76:21
 77:8,10 80:18 81:16 82:22
 84:12,20 86:24
rituals 45:13
RLUIPA 31:6,10
room 54:14 57:11 76:12,14,15,18
 76:23
rubbing 58:5,6
rule 10:21
ruled 70:5
Rules 4:5
run 68:25 81:2,12
runaround 74:3
running 67:16,25 68:5 81:9
rushed 62:12,13
Russo 48:7

S

S 3:2
S-K-R-E-D 50:16
safe 61:22
safety 34:3 37:17 50:6
sale 12:9,10
saved 28:25
Saviors 34:20,21
saw 50:23
saying 29:7 49:9 55:5 56:18
 73:14 74:13,15
Schulley 15:22 48:2
science 36:2 45:2,3,5,10,11
sciences 45:13
se 2:5
search 54:6,17,20 56:21 57:19
 59:8 64:2 75:6,11,13
searched 34:3,4 52:17 54:13,15
 55:12,12 56:19,25,25 57:2,2,6
 57:14,18,23 58:2,23 74:20
searching 54:10 58:13 74:20
 75:2
second 47:14 59:6 61:11
secrets 35:9
section 31:11,12 37:24
security 11:13 34:4 37:18 50:6

see 8:24 32:5 38:23 39:25 40:9
 40:10 44:6
seeing 38:7 60:3,13
seek 59:4,9,13
seeking 59:23
seeks 31:8
seen 47:18 49:20,24 53:18 61:18
 66:12
self-mastery 41:14
sell 12:16
send 29:25
sending 52:6 71:22
sent 17:9 28:25 38:5 47:19 50:8
 58:20 63:2 81:22 83:18 87:17
 87:19,21
sentence 12:25 18:4 45:25
separate 19:3,4
September 1:11 14:4,20,21,24
 15:4,6,7 48:13 49:16
sergeant 9:15 15:22 47:6 48:3
 49:4 53:13,13
serve 19:21
served 18:3 19:7
service 34:16,19 69:11
services 60:14 69:10
serving 18:5
set 5:16,17 10:9 25:18 47:11
 87:25
settlement 28:6
seven 66:21 69:7
seventh 20:15
seventy 17:2 44:5
Seventy- 25:2 72:25 73:4
Seventy-eight 25:13 72:20,23
 73:6,24 74:5
Seventy-eights 70:15,22 72:13
 72:15
Seventy-eighty 10:7
Seventy-six 25:20 37:18 38:3,4
sexual 56:2,4 57:18 74:12
sexually 61:14 75:5
shake 11:3
shaved 32:7 36:23 49:18
sheet 89:8
shorter 37:5
shot 83:10
show 26:17 43:11 70:13
sic 39:14 53:7
side 78:25

sides 32:7,13 36:23 49:18	spell 41:20
sign 4:12 36:4 91:10,11	spelling 29:24 47:7 48:6,7 49:4 69:16,17
signature 91:12	spent 18:23 20:24
signed 4:15 91:24	spewing 55:9
sill 78:6	spiritual 39:22 67:17,19
Simmons 48:7 58:21 61:14,16,18 61:20 63:22	spread 58:4
Simmons' 51:24	stairs 76:20
sir 10:11	start 5:20 7:18 33:2 36:17
sit 11:20 16:7 24:14 29:19 31:24 32:6 38:9 78:6,12	started 33:9 59:23 60:3,13
Sitchin 40:4	state 5:13 11:15 13:11 18:23 24:5 28:10 39:3 52:19 70:7 89:3
situation 82:3	stated 53:3 75:8 79:23 90:4
six 31:13 84:18 86:17	statement 12:17 26:15 34:2 87:6
sixth 20:15	states 1:2 30:7
sixty 16:11,16,25,25	stating 12:17 47:19 48:16 50:9 53:6 72:17 73:19
Skra 50:15	status 9:21 39:23
Skred 49:18 50:9,14,16 51:12 52:6	steps 41:13,15
slacking 67:8	steroid 83:10
slid 78:6	STIPULATED 4:3,8,11,14
slide 78:9,10,10	STIPULATIONS 4:2
slipping 83:9 84:8,10	stone 40:16
slit 53:4	stop 51:6 72:3 84:17
slits 53:8	stopped 48:12,18 49:23
slot 77:15,23 82:14,15,17,23 83:7 84:11,15	Street 23:15 67:24 68:19
slots 82:16	stress 62:3,3
Slow 14:22	strike 10:5 29:8
smoke 63:13,15	struck 85:13
smoked 63:17	studies 41:24
social 11:13	stuff 62:8
sole 35:9 53:7	subconscious 43:14
solid 35:17	subpoena 4:7
somebody 12:16 29:11 64:2 77:25 79:20	subscription 65:24 66:5
soon 23:10	substance 12:6 13:4 18:11,12,16 19:12,16 20:15
sorry 10:23 15:2,5 22:21 30:2 30:22 32:16 40:23 43:2 45:4 50:13 65:10 74:19	sued 6:19 22:7
sort 7:7 10:21,25 24:23 32:8,8 61:6 84:20	suit 29:18
sought 59:17,21 60:24 86:6	Sullivan 48:8
South 77:18	summary 10:2,3 31:16,18,19 54:2 87:22
special 15:18,19 16:7,10 17:5,6 17:14,17	summons 70:8
specialized 23:2	Superintendent 1:6 7:23 91:5
specific 67:14 69:24 70:23	supervisor 26:14 29:4 30:5
specifically 29:19 30:5 48:25 49:14 54:5 70:18 73:16,17	supplemental 69:23,24 71:10,18
	support 87:22
	supporting 87:6
	supreme 38:21 70:5 73:19

sure 14:23 19:18 29:2 48:2
64:18
sustained 85:25 86:20
swear 5:7
sworn 3:3 5:11 89:11 90:5
symbol 39:21 42:10 43:11
symbols 44:7
symptoms 33:6
System 28:10

T

T 29:24 30:4
take 6:20,23 8:2 11:3 38:8
42:18 49:24 60:20 64:22 76:25
78:10 80:15 84:22,24,25 87:6
taken 1:13 4:6 89:5 90:3
talk 7:17 70:18 74:10 78:22
talked 59:16 63:24
talking 30:19,24 36:8 39:10
46:5 55:3,4
taped 62:9
tax 24:5
teach 35:11 45:17
teaching 67:17
technology 47:22
tell 21:15,17,18 22:2,3 40:14
49:13 56:11,13 59:2 61:5
80:18 83:15
telling 35:3 80:8
temperature 80:15
Temple 36:2 45:2,3,5,10,11
ten 13:2 28:23 31:7,13 41:15
63:6 73:22 80:3
tens 41:13
term 19:7,22 20:3,6
terms 7:4 11:2,2 18:22 20:24
23:19 39:19 86:13
tested 12:15
testified 8:4,10 18:22
testify 24:18 90:5
testimony 5:8 10:12 24:21 34:12
82:2 86:9,12 89:5 90:3,5
91:10
Thank 5:15 65:10 87:25
theirself 39:14
thighs 58:6
thing 39:11 83:8
things 19:3 40:3 42:22 44:7
45:13 46:14 62:9
think 15:13 19:17,20 20:11,15

53:11 64:19 77:7
third 12:8 13:4 18:16,17 19:16
61:12 65:7,8 76:22 78:8
thirty 26:24 27:4 29:16,17 63:6
91:10,11
thirty- 82:24
thirty-five 13:16
thought 55:7
threat 37:17
three 10:5 19:24 31:14 32:11
46:6,10,17,19,19 47:15 61:20
61:22,23 64:11,15 65:3,9 67:9
75:12 82:8 83:11
threw 72:24
tier 46:6 47:14
tight 53:4
till 20:7 68:3,3
time 4:6,16 9:11 16:6,7 17:15
18:3,23 19:6 20:25 21:3,4,4
25:12 27:25 28:2,4,6 35:5
47:21 57:16 74:4 77:14 78:22
85:22,25 86:6 87:12 89:5 90:4
times 8:9 55:10 67:9,13
today 5:8 10:12 11:20 24:15,18
24:21,24 29:20 30:19,24 32:7
34:12 38:9
Today's Date 90:10
told 29:24 30:5 47:7 49:24,24
49:25 50:7,10,24 51:13,14
52:18,18 55:7 58:21 61:14,16
61:19,21 62:22 70:9 74:17
75:4,5,14,15 76:19 82:5 85:3
tomorrow 22:13
top 6:2 32:8,16,23 73:23 78:11
83:8
totally 25:6 46:11
touched 55:12 56:20 58:12 59:7
74:15
touching 54:11,20 75:15
training 23:2
transcript 89:6,8 91:10,11,12
transcription 90:6
transfer 7:7
transferred 6:16 11:23 15:20,21
transmit 29:23
transmitted 29:21
travel 6:17,23
tray 78:2,4,6
trays 77:15,23

treatment 58:16 59:4,10,13,18
 59:21 60:24 61:7 62:7,19 76:4
 85:18 86:7,19
trial 4:10,17 87:16
tried 84:23
true 35:11 38:22 89:6,8 90:7
truth 5:9,9,9 90:5,5,6
truthful 10:13
truthfully 24:18
trying 33:19 36:7 42:3,3 43:3,4
 43:5,5,24,25 47:11 69:20,22
 70:24,25 71:3,9,15
turned 60:22
Twelfth 40:5
twelve 28:24 37:18 38:3,4 77:18
twenty 78:21 79:8 80:9,11
twenty- 31:13
Twenty-eight 31:11,12
twenty-five 64:10 80:13
twenty-four 6:3
twenty-one 78:21
Twice 57:21
two 13:20 17:16 18:21 19:3,4
 24:12 28:17,21 31:11 32:11
 40:10 46:15,16,20,21,23,23
 49:5 53:20 61:12 65:5,13
 67:13 68:24 69:25 75:12 76:6
 82:8,15
type 6:10 15:24,24 62:8
types 65:16
typewritten 90:6

U

U.S.C 31:11,12
Uh-huh 5:21 16:4 39:16 47:3
 69:9 80:25
unconstitutional 26:18
understand 10:11,16 28:12 31:7
 31:13 36:7 38:2,14 73:13
understanding 86:13
unit 15:18,19 16:8,10 17:5,7,15
 17:18 53:20
United 1:2 23:20
universe 35:10
unreasonable 54:6
upper 85:12
upset 52:4,22
upstairs 78:8 82:19,24
Upstate 15:18 17:5,6,14,17
use 87:7

Utica 70:3

V

v 1:1,5 2:1 3:1 4:1 5:1 6:1 7:1
 8:1 9:1 10:1 11:1 12:1 13:1
 14:1 15:1 16:1 17:1 18:1 19:1
 20:1 21:1 22:1 23:1 24:1 25:1
 26:1 27:1 28:1 29:1 30:1 31:1
 32:1 33:1 34:1 35:1 36:1 37:1
 38:1 39:1 40:1 41:1 42:1 43:1
 44:1 45:1 46:1 47:1 48:1 49:1
 50:1 51:1 52:1 53:1 54:1 55:1
 56:1 57:1 58:1 59:1 60:1 61:1
 62:1 63:1 64:1 65:1 66:1 67:1
 68:1 69:1 70:1 71:1 72:1 73:1
 74:1 75:1 76:1 77:1 78:1 79:1
 80:1 81:1 82:1 83:1 84:1 85:1
 86:1 87:1 88:1 89:1 90:1 91:1
 91:5
Vanacore 48:8 53:13
verbal 10:25
verified 70:9 73:20
versus 7:23
violate 49:12 54:19
violation 21:7 25:10,16 72:17
violent 38:24

W

Wait 33:15
waiting 52:9 75:9
walk 54:14
walked 49:17 50:8 53:15,22
 75:12
walking 52:3
wall 23:14 61:15 74:18,21 75:3
 75:8,14,16,17,17,18 76:4
walls 40:16 81:4
want 8:19 9:6 35:18 37:20 39:25
 48:14 54:5 55:9 57:3 70:17,17
 72:16,19 75:5 76:24
wanted 16:5,6 33:18,25 34:19
 40:14 87:7
wasn't 12:10 29:25 30:6 52:2
 69:22 70:12,25 71:3 72:23
watch 29:22
water 80:20,22,24 81:2,9,12
Waugh 48:6 52:9
way 6:11 28:13,18 29:3,10 43:12
 48:13,14 60:5 72:15 78:11
we'll 53:9

we're 5:4 7:17 11:20 24:24
 30:19,23
wear 68:9
wearing 33:2,10 79:9
weather 80:17,18,19
weave 32:22
Webbe 48:7 63:22
week 50:8 67:9
weeks 17:16 69:25 84:18 86:17
weird 56:16
Wenlen 48:7
went 17:6 26:12 28:18 30:14
 53:12 56:21 59:12 62:15 77:2
 77:3
weren't 33:15 35:4 46:20
West 75:24,25 76:20
Williamson 48:8 52:8 54:22
window 78:6
windows 79:7
wing 75:24,25 76:20
wisdom 38:22
wise 81:20
witness 4:11,15 5:14,19,22 6:2
 6:6,9,18,25 7:11,15 77:8 87:8
 87:17
witness(es) 90:5
witnesses 87:15,20
word 52:22 91:16,17,18,19,20,21
 91:22
work 23:20 50:22 51:9
worked 34:8
world 39:20
worry 75:16
worst 39:2
wouldn't 51:6 60:25 73:15,17,18
 73:20,21,21,23,25
write 14:23 50:9,11 53:14,16,19
 53:23 72:4 82:9
written 48:3 49:7 87:21
wrong 36:7 51:25 83:13,16 85:4
wrote 12:17 17:10 40:4 50:25
 52:5,19 53:20 58:17 82:10

X

X 3:2 89:9,12
XXX-XX-8941 11:14

Y

yeah 5:22 6:18,22,25,25,25 7:2
 9:9 11:9 16:16,18 19:4,20

24:8,10 25:4 27:17 28:20
 32:20 37:7 40:18 42:21,24
 44:16 48:24 57:10 59:23,24
 60:16 61:5 62:4,4,5,12,12,12
 63:20,20 65:12 66:18,18 68:13
 70:17,23 73:21 75:22 77:24
 79:14,16 80:10,13,23 82:20
 83:23 85:9,15 87:9
year 12:21 13:11,24 14:13 44:14
 55:18 63:4 84:4 85:16
years 13:2,20 18:7 19:24 23:22
 24:7,12 35:23 67:25
yoga 40:11 63:24 64:3,4 65:4,5
 65:14,22 66:6,22,25 67:5,10
 67:14,18 68:9
York 1:2,12 2:8 8:21 11:15
 18:23 20:11 22:14 23:16 28:10
 39:3 91:14
you're 5:8

Z

Zecharia 40:4
zero 47:5,5,5

0**1**

1 90:4,6
1:00 77:5
1:01 77:11
1:10 87:2
1:11 87:3
1:12 88:2
11:40 5:2
137 68:16
137th 67:23 68:19
149 11
15-C.V.-0390 7:24
15-CV-0390 1:5 91:5
15th 16:14
1982 11:12

2

20 52:14
2000 18:24 19:2 20:3,7 23:23
 24:10 57:21
2001 20:7 24:10
2005 18:25 19:2,8,22,23 20:2,20
 20:22
2006 23:7

800.523.7887

Associated Reporters Int'l., Inc.

Page 111

2007 45:23
 2008 19:23 23:24
 2009 23:24 68:3
 2010 18:8 19:7
 2011 12:22 18:8 23:10,11,12
 24:8,9,10 85:17
 2012 12:22 13:12 14:3,16,18,24
 15:4
 2013 9:11 33:3,4,9,15 34:8
 35:20,21 36:18,19,21 38:10
 42:4,8
 2014 14:4,10,20,21,24,24 15:4,7
 26:6 28:16,23 72:12 84:5
 2015 14:11,12,21 15:7,13,14
 16:13,13,17,19 48:15,15 55:19
 57:20,21,22 58:12 59:8,18
 61:4,5,8 63:6 64:25 66:16
 72:11,12 74:23 76:16 89:11
 2016 18:2 44:14,16,16
 2017 1:11
 2023 24:3
 20th 52:14 55:17
 22nd 77:3
 26 11:12 84:3
 27 63:6
 27th 58:24 61:14,23 74:17,19

 3

30 91:10,11
 3rd 23:12 25:6

 4

 5

523-7887 91:3
 59 68:18,18
 5th 52:11,13 67:24 68:18

 6

6 1:11
 6th 49:17

 7

7 3:3
 7th 26:5

 8

800 91:3

 9

9-6-2017 1:1 2:1 3:1 4:1 5:1
 6:1 7:1 8:1 9:1 10:1 11:1
 12:1 13:1 14:1 15:1 16:1 17:1
 18:1 19:1 20:1 21:1 22:1 23:1
 24:1 25:1 26:1 27:1 28:1 29:1
 30:1 31:1 32:1 33:1 34:1 35:1
 36:1 37:1 38:1 39:1 40:1 41:1
 42:1 43:1 44:1 45:1 46:1 47:1
 48:1 49:1 50:1 51:1 52:1 53:1
 54:1 55:1 56:1 57:1 58:1 59:1
 60:1 61:1 62:1 63:1 64:1 65:1
 66:1 67:1 68:1 69:1 70:1 71:1
 72:1 73:1 74:1 75:1 76:1 77:1
 78:1 79:1 80:1 81:1 82:1 83:1
 84:1 85:1 86:1 87:1 88:1 89:1
 90:1 91:1,6
 9th 26:6 48:14